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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of: Main Case No.

RESIDENTIAL CAPITAL, LLC, et al., 12-12020-mg

Debtors.

- - - - -x

BURNETT, Adv. Case No.

Plaintiff, 15-01044-mg

-against-

RESIDENTIAL CAPITAL, LLC, et al.,

Defendants.

- - - - -x

In the Matter of: Main Case No.

GMAC MORTGAGE, LLC, 12-12032-mg

Debtors.

- - - - -x

HEYWARD, Adv. Proc. No.

Plaintiff, 14-01778-mg

-against-

GMAC MORTGAGE, LLC, et al.,

Defendants.

- - - - -x

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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March 31, 2015

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10:04 AM

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B E F O R E:

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HON. MARTIN GLENN

25

U.S. BANKRUPTCY JUDGE

Hearing RE: Order to Show Cause Why Court Should Not Impose
Sanctions Pursuant to Federal Rule of Bankruptcy Procedure 9011
Against Pablo E. Bustos, Esq.

(CC: Doc. No. 8208) ResCap Liquidating Trust's Eighty-Fourth
Omnibus Objection to Claims (I) Reducing and Allowing Claims
and (II) Redesignating, Reducing, and Allowing Claims Filed by
Joseph A. Shifer on Behalf of ResCap Liquidating Trust.

(Doc. No. 8343, 8349, 7736, 7817, 7824, 7967) Telephonic Status
Conference RE: Claim(s) of Maria M. and Elda Thompson.

(CC: Doc# 7990) Adjourned Hearing RE: Motion for Objection to
Claim(s) Number 2397.

(CC: Doc# 8042) ResCap Borrower Claims Trust's Eighty-Second
Omnibus Objection to Claims (No Liability Borrower Claims).

(CC: Doc# 7760) Pre-Trial Conference RE: Objection of the
ResCap Borrower Claims Trust to Claim Number 5067.

15-01044-mg: Pre-Trial Conference.

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2 14-01778-mg: (CC: Doc#15) The ResCap Liquidating Trust's
3 Motion to Dismiss Plaintiff's Adversary Complaint.
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1

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17 BY: NATHANIEL ALLARD, ESQ.

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1
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7
8 BY: PABLO E. BUSTOS, ESQ.

9
10
11 ALSO PRESENT:

12 GWENDELL L. PHILPOT, Party Pro Se

13 HEROLD GAY, Party Pro Se (TELEPHONICALLY)

14 DEANNA HORST, Senior Director of Claims, ResCap

15 (TELEPHONICALLY)

16 KATHY PRIORE, ESQ., Associate Counsel, ResCap Liquidating

17 Trust (TELEPHONICALLY)

18 JOHN E. SATTERWHITE, Party Pro Se (TELEPHONICALLY)

19 KENNETH C. THOMAS, Party Pro Se (TELEPHONICALLY)

20 ELDA THOMPSON, Party Pro Se, Maria M. Thompson

21 (TELEPHONICALLY)

22 STEVEN D. RIGEL, Party Pro Se (TELEPHONICALLY)

RESIDENTIAL CAPITAL, LLC, et al.

7

1 P R O C E E D I N G S

2 THE COURT: You may be seated. We're here in
3 Residential Capital, number 12-12020.

4 Mr. Rosenbaum.

5 MR. ROSENBAUM: Good morning, Your Honor. Norm
6 Rosenbaum, Morrison & Foerster, for the ResCap Borrower Claims
7 Trust and the ResCap Liquidating Trust.

8 Your Honor, the first matter on the agenda is at page
9 6, num -- excuse me, II. It's the order to show cause why the
10 Court should not impose sanctions pursuant to Federal Rule of
11 Bankruptcy Procedure 9011 against Pablo E. Bustos, Esquire.
12 That's docket number 8207. I'm not sure if Mr. Bustos is in
13 the court or --

14 THE COURT: Mr. Bustos, are you present?

15 Mr. Bustos is not present in court. Mr. Bustos called
16 my chambers several days ago, said he's moved to Arizona and
17 asked permission to appear by telephone. He was
18 directed -- the answer to that was no.

19 The order to show cause in this matter was entered on
20 February 26th, 2014. I won't read the entire order, but it was
21 an order to show cause why Court should not impose sanctions
22 pursuant to Federal Rule of Bankruptcy Procedure 9011 against
23 Pablo E. Bustos, Esquire. The last paragraph of the order on
24 page 4 provide that -- ordered that -- "ordered that Bustos and
25 counsel for the Trust shall appear in person at the hearing on

RESIDENTIAL CAPITAL, LLC, et al.

8

1 March 31, 2015".

2 The order to show cause also, on page 4, reads as
3 follows: "Ordered that on or before 5 p.m., March 13, 2015,
4 Bustos shall file a response to this order explaining why cause
5 exists such that the Court should not impose sanctions against
6 him. Bustos' response shall address, as this Court has done in
7 this order and its opinion, each of the eleven affirmative
8 defenses asserted in the opposition, explaining why each
9 affirmative defense does not constitute a violation of
10 Bankruptcy Rule 9011."

11 Bustos filed a response. It's dated March 13, 2015.
12 He failed to address, as directed by the -- the Court had
13 directed him to address each of the affirmative defenses to
14 establish why he didn't violate Rule 9011. With respect to
15 each one, he failed to do so. He's also failed to appear
16 today.

17 On February 26th, 2014, the Court entered its
18 memorandum of opinion and order sustaining, in part, and
19 overruling, in part, the ResCap Borrower Claims Trust's
20 objection to claim numbers 345 and 3743, filed by Conrad B.
21 Burnett, Jr. That memorandum of opinion addressed the Trust's
22 objection to Burnett's claims, specifically addressed each of
23 the eleven affirmative defenses that Bustos asserted in his
24 opposition to the objection to Burnett's claims.

25 In page 16 of that opinion, the Court stated as

RESIDENTIAL CAPITAL, LLC, et al.

9

1 follows: in any event -- "In any event, Burnett or, rather,
2 his attorney fails to establish that any of the affirmative
3 defenses actually support the claims; not one provides even an
4 inkling of a viable form of relief. The Court concludes that
5 the affirmative defenses are frivolous, untimely,
6 unsubstantiated by the evidence in the record before the Court
7 and/or unsupported by current or applicable law, existing law
8 or by a nonfrivolous argument for the extension, modification
9 or reversal or existing law or the establishment of new law.

10 "It is evident that Burnett's attorney did not
11 adequately research these defenses and has attempted to throw
12 anything at the wall in the hopes that something may stick.
13 Needless to say, nothing sticks." And obviously, the opinion
14 goes on from there.

15 So the argument to show cause incorporated the opinion
16 from which I've just quoted. Bustos' response to the order to
17 show cause -- I should say, in addition to his response, which
18 is the "Affirmation of Pablo E. Bustos in Support of Dismissal
19 of Sanctions Motion", he also provided a declaration of Dennis
20 J. Huelbig, H-U-E-L-B-I-G-, Jr., in support of dismissal of an
21 order to show cause as to Attorney Pablo E. Bustos, Esq.

22 In addition, filed on the docket is a letter from Mr.
23 Burnett, dated March 25th, 2015. If Mr. Bustos was here, I
24 would be inquiring, because Mr. Burnett indicated that he
25 retained a firm called New Research Services out of Las Vegas

RESIDENTIAL CAPITAL, LLC, et al.

10

1 to create and process the claims and necessary paperwork. This
2 firm is a paralegal firm that claims to be familiar with
3 Federal Bankruptcy procedure. New Research Services is owned
4 and operated by one person, Dennis Huelbirg, Jr. (sic).

5 "I was told in August by New Research Services that I
6 needed an attorney specialized in bankruptcy to collect and
7 process the proofs of claims. I agreed to the suggestion and
8 paid New Research Services for an attorney in the pleadings
9 required under the Federal Bankruptcy procedure. I have spent
10 over 11,000 dollars for paperwork and attorney services to
11 date. I have requested from Mr. Bustos an invoice for services
12 rendered and, to date, have not received an invoice with
13 billable hours. Mr. Bustos claims he has not been enough money
14 by New Research Services yet, yet I was billed for over forty
15 hours of legal work."

16 That's on the docket as well.

17 The Court finds and concludes that Pablo E. Bustos has
18 violated Federal Rule of Bankruptcy Procedure 9011(b) of 9011.
19 And 9011(b) provides that the Court may, on its own initiative,
20 enter an order describing the specific conduct that appears to
21 violate (b) and directing an attorney, law firm or party to
22 show cause why it has not violated (b) with respect thereto.
23 That's what the order to show cause did. The order to show
24 cause incorporated the opinion that I've referred to.

25 Bustos' response failed to do what he was directed to

RESIDENTIAL CAPITAL, LLC, et al.

11

1 do, namely address each of the affirmative defenses that were
2 asserted in the opposition to the objection to the -- the -- to
3 Burnett's claims. The Court finds and concludes that Bustos
4 has violated Federal Rule of Bankruptcy Procedure 9011(b). His
5 failure to appear today, as ordered by the Court, also violates
6 the Bankruptcy Rules and is subject to sanction.

7 The Court will enter an order imposing sanctions in
8 the amount of 1,000 dollars for each of the eleven affirmative
9 defenses that were improperly asserted, so that's a total of
10 11,000 dollars. In addition, the Court will enter an
11 additional sanction in the amount of 2,500 dollars against
12 Bustos for failure to appear today, as he was ordered today.
13 So in total, sanctions in the amount of 13,500 dollars payable
14 to the clerk of the Court will be entered against Bustos with
15 an order that he pay the clerk within fourteen days from the
16 entry of the order.

17 (Pause)

18 THE COURT: All right. That's going to be the Court's
19 disposition of the order to show cause and an additional
20 sanction as a result of Bustos' failure to appear today.

21 MR. ROSENBAUM: Thank you, Your Honor.

22 Your Honor, the next matter on the agenda is at page
23 7. It's III. This is a pre-trial -- scheduled pre-trial
24 conference in adversary proceeding 15-01044. It's Burnett v.
25 Residential Capital, LLC. That was also filed by --

RESIDENTIAL CAPITAL, LLC, et al.

12

1 THE COURT: Mr. Bustos.

2 MR. ROSENBAUM: -- Mr. Bustos on behalf of Mr.
3 Burnett.

4 Your Honor, as we addressed in our response to the
5 order to show cause, this is an entirely frivolous complaint.
6 We did invoke the supplemental adversary procedures. We have
7 had at least phone calls to Mr. Bustos, but we have not heard
8 back from him. Once --

9 THE COURT: Were you aware he moved to Arizona?

10 MR. ROSENBAUM: I wasn't. I don't know if Mr. Wishnew
11 was.

12 MR. WISHNEW: I can only say -- Your Honor, Jordan
13 Wishnew, ResCap Borrower Claims Trust -- I received a voicemail
14 from Mr. Bustos last evening indicating he was coming back from
15 Arizona. I wasn't aware that he had actually moved to Arizona,
16 so the answer being no, Your Honor.

17 MR. ROSENBAUM: Thank you.

18 In any event, had he spoken to us, we would have asked
19 him to just voluntarily dismiss this complaint. If he's not
20 prepared to comply with the adversary procedures, then we could
21 move to dismiss it as well. We'd obviously prefer not to incur
22 that expense.

23 THE COURT: Well, Mr. Rosenbaum, you'll decide how the
24 Trust wishes to proceed. I would certainly point out that Rule
25 9011(c)(1)(A) sets forth the procedure to be followed. If a

RESIDENTIAL CAPITAL, LLC, et al.

13

1 party wishes to seek sanctions, I won't comment about the
2 substance of the adversary proceeding complaint that's been
3 filed. If you wish to proceed under 9011(c)(1)(A), in part,
4 the motion for sanctions may not be filed with or presented to
5 the Court unless -- within twenty-one days after service of the
6 motion or some other period as the Court may prescribe the
7 challenge paper claim defense, contention, allegation or denial
8 is not withdrawn or appropriately corrected. I won't read on.

9 So there's a procedure. The matter was set for a case
10 management conference today. Mr. Bustos has failed to appear
11 for it. Was he notified that the conference was going forward?

12 MR. ROSENBAUM: Yes.

13 THE COURT: All right. An additional sanction will be
14 entered against Mr. Bustos in the amount of 2,500 dollars for
15 failure to appear for the case management conference
16 in -- what's the adversary proceeding number?

17 MR. ROSENBAUM: 15-1 -- 15-01044.

18 THE COURT: A separate order will be entered on
19 sanctions and that it will be incorporated into the same order.

20 Mr. Bustos is not having a good day.

21 MR. ROSENBAUM: Thank you, Your Honor. We'll decide
22 how to proceed on the adversary.

23 Just lastly, Your Honor -- I mean, we are, obviously,
24 cognizant of your -- of the order that you did enter on the
25 claims objection, and we would like to have a dialogue with Mr.

RESIDENTIAL CAPITAL, LLC, et al.

14

1 Burnett.

2 THE COURT: He's represented by counsel.

3 MR. ROSENBAUM: Thank you.

4 THE COURT: I can't help you on that one. I -- you
5 undoubtedly saw the letter that Mr. Burnett filed with the
6 Court.

7 MR. ROSENBAUM: Thank you, Your Honor.

8 THE COURT: "I would ask the Court to keep Pablo
9 Bustos as my attorney of record to finish the case for the
10 timely proofs of claim 245 and 3743."

11 MR. ROSENBAUM: We'll respect his decision, and we'll
12 try to reach out to Mr. Bustos, Your Honor.

13 Your Honor, the next matter of agenda is IV. It's the
14 ResCap Liquidating Trust's eighty-fourth omnibus objection, and
15 I'll cede the podium to Kramer Levin.

16 THE COURT: Sure.

17 MR. ALLARD: Good morning, Your Honor. Nathaniel
18 Allard of Kramer Levin Naftalis & Frankel for the ResCap
19 Liquidating Trust.

20 I'm here on the eighty-fourth omnibus objection to
21 claims, which --

22 THE COURT: Eighty-fourth or eighty-second?

23 MR. ALLARD: Eighty-fourth. We're at page 7 of the
24 agenda --

25 THE COURT: Sorry.

RESIDENTIAL CAPITAL, LLC, et al.

15

1 MR. ALLARD: -- IV.

2 THE COURT: All right, go ahead.

3 MR. ALLARD: Sure. It's the eighty-fourth omnibus
4 objection to the claims, which the liquidating trust filed on
5 February 26th, 2015, and it can be found at ECF number 8208.

6 THE COURT: Okay.

7 MR. ALLARD: Pursuant to the objection, the
8 liquidating trust seeks to reduce and allow certain claims. We
9 have already resolved or adjourned certain of the claims
10 subject to the objection, and no responses were filed. So we
11 are going forward today solely with respect to four claims
12 filed by Wells Fargo Bank, and that is claim number 7359, 7360,
13 7366 and 7373. And we would just request entry of an order
14 reducing and allowing the -- those Wells Fargo claims subject
15 to the objection.

16 THE COURT: Now, is it -- my understanding, it's going
17 forward on an uncontested basis?

18 MR. ALLARD: That's correct. It's uncontested.

19 THE COURT: So is there anyone present on -- in the
20 courtroom or in the telephone for Wells Fargo?

21 Just to advise me -- tell me, what -- you've reached
22 an agreement with Wells?

23 MR. ALLARD: No, we were in contact with counsel to
24 Wells Fargo prior to and the day of filing the objection.

25 THE COURT: Yes.

RESIDENTIAL CAPITAL, LLC, et al.

16

1 MR. ALLARD: And we informed them of our intentions,
2 and they did not file a response. And we interpret that as
3 they are accepting of the reduced and allow of the claim would
4 be one claim against Residential Funding Company for 50,541
5 dollars and a claim against GMAC Mortgage in the amount of
6 \$7,903.24, and the other two claims would be disallowed and
7 expunged.

8 THE COURT: So -- all right. Since they don't have
9 their counsel, they didn't file anything, let me just make some
10 recitals. Through the objection, the Trust seeks to reduce and
11 allow four claims filed by Wells Fargo because they allegedly
12 overstate the value owed and should, therefore, be reduced. In
13 its capacity as custodian of certain mortgage backed security
14 trusts, warehousing facilities, pools of mortgage loans and
15 other financing arrangements, Wells Fargo filed claim number
16 7359 against debtor Residential Capital, LLC; claim number 7360
17 against debtor Residential Funding Company; claim number 7366
18 against debtor GMAC Mortgage, LLC and claim number 7373 against
19 debtor Executive Trustee Services, Inc.

20 According to the Trust, the Wells Fargo claims are
21 based on custodial agreements with the debtors and Wells Fargo,
22 and the debtors entered into a stipulation whereby all of Wells
23 Fargo's potential custodial claims, of which there were more
24 than four, were deemed consolidated into the Wells Fargo claims
25 that I have here.

RESIDENTIAL CAPITAL, LLC, et al.

17

1 The Trust conducted an investigation of the debtors'
2 books and records and determined that Wells Fargo was entitled
3 to a general unsecured claim of 50,541 dollars against RFC and
4 a general unsecured claim in the amount of \$7,903.24 against
5 GMAC Mortgage. The Trust, therefore, argues that claim number
6 7360 should be allowed in the amount that I've described
7 against RFC, and claim number 7366 should be allowed in the
8 amount I've described against GMACM and that claim number 7359
9 and 7373 should be disallowed and expunged.

10 Wells Fargo did not file any response. Good cause
11 appears to support the objection. The objection's sustained.

12 MR. ALLARD: Thank you, Your Honor. We will submit a
13 order to chambers.

14 THE COURT: Thank you.

15 MR. WISHNEW: Good morning, Your Honor. Jordan
16 Wishnew, Morrison Foerster for the ResCap Borrower Claims
17 Trust.

18 The next matter on today's agenda is item 2 on page 8,
19 the ResCap Borrower Claims Trust's seventy-sixth omnibus
20 objection to claims. It is a status conference concerning the
21 claim of Maria and Elda Thompson, and I believe Ms. Elda
22 Thompson is on the phone today.

23 THE COURT: Ms. Thompson, are you on the telephone?

24 MS. THOMPSON: Yes.

25 THE COURT: Thank you very much.

RESIDENTIAL CAPITAL, LLC, et al.

18

1 Go ahead, Mr. Wishnew.

2 MR. WISHNEW: Thank you, Your Honor.

3 Your Honor, just to update the Court, when we were
4 last before Your Honor, we were arguing to have the claim
5 expunged under the -- for the reasons stated in the
6 omnibus -- seventy-sixth omnibus objection. There were
7 questions raised concerning whether, in fact, Ms. Thompson had
8 made the payments that we asserted were not made and prompted
9 the foreclosure proceeding to be commenced in July of 2007
10 against Ms. Thompson.

11 The Court subsequently directed counsel to meet with
12 Ms. Thompson. Ultimately, on March 17th, I appeared -- or I
13 visited with Ms. Thompson at her home in Willingboro, New
14 Jersey, discussed the claim, reviewed payments that the
15 claimant believed reflected timely payment of the nonpayments
16 preceding the 2007 foreclosure. And what I was shown, in fact,
17 were payments made in 2008 pursuant to a repayment plan that
18 Ms. Thompson had entered into with GMAC Mortgage, which brought
19 current the loan on account the missed payments in the spring
20 of 2007.

21 So it was essentially my position that,
22 notwithstanding that there have been representation that they
23 had documents to show payment, the documents that were
24 ultimately shown to me didn't substantiate a timely payment
25 prior to the commencement of the July 2007 foreclosure. Once I

RESIDENTIAL CAPITAL, LLC, et al.

19

1 sat with Ms. Thompson -- I think her mother, Maria Thompson,
2 in -- for approximately seventy-five minutes that day, and
3 ultimately word came out is there -- the disagreement as to
4 whether or not the debtors are or are not responsible to them
5 for any liability, seeing that we had reached, in my opinion,
6 an impasse, I asked to excuse myself from their home and
7 suggested that it was best to try and have the Court instruct
8 us as to what contested issues the Court sees that it would
9 like further evidence on so that we can try and bring this to a
10 head and to a resolution.

11 And that's what's brought us here today, Your Honor.

12 THE COURT: All right. And the Court is in receipt of
13 a letter from Elda and Maria Thompson. It's dated March 24th,
14 2015, and it refers to your meeting, Mr. Wishnew. I assume
15 you've seen the letter.

16 MR. WISHNEW: I have, Your Honor.

17 THE COURT: Okay. So I had directed -- well, Ms.
18 Thompson, do you want go ahead and respond?

19 MS. THOMPSON: Yes. I -- actually, on the day that he
20 came to our house, Your Honor, he actually didn't want to
21 discuss the items blacked out on the accounts, itemized, to
22 show the payments, because we were concerned that -- in 2007,
23 we were sent an accounting of everything that I had paid and
24 not paid. And we showed him that. But on the one that he sent
25 us, it's blacked out payments that we cannot see the amount.

RESIDENTIAL CAPITAL, LLC, et al.

20

1 We asked him about that, and he said it's only
2 attorney privilege to see items only. But I thought everything
3 that paid on my account, under my name, I should be able to
4 see. And he was not here for seventy-five minutes. So that's
5 a little exaggeration on his time.

6 THE COURT: Look, Ms. Thomp --

7 MS. THOMPSON: So we tried to show -- well, we tried
8 to show that the payments that he claims was the -- from the
9 repayment arrangement, he -- we tried to show him that. He got
10 a little upset and said I don't need to be shown out and left.
11 That's not what ended it.

12 THE COURT: All right. Ms. Thompson --

13 MS. THOMPSON: Now, I -- my concern was that in 2007
14 we made an arrangement, because they sent -- they sent a
15 sheriff to the house saying that the foreclosure was approved
16 and claiming that the foreclosure was approved in July and in
17 August. Now, when we came to find out that the mortgage
18 actually was dismissed, they knew that it was dismissed. And
19 even though they knew that it wasn't approved, they still went
20 ahead with these arrangements that included court costs and
21 attorney costs, which we ended up paying, over \$28,369.95. We
22 tried to explain that.

23 On that day that they sent a sheriff to the house, I
24 suffered a major heart attack and ended up having to be revived
25 six times in front of my children. Now, I think that they

RESIDENTIAL CAPITAL, LLC, et al.

21

1 overstepped when they sent the sheriff to the house knowing
2 that the foreclosure was not going to be able to go through.
3 And the following year, they kept accepting the payments even
4 though they weren't listing the payments on the account, which
5 is -- which shows on the reflected -- on the account's itemized
6 section that they sent. It's also not reflected on there.

7 And so we were trying to explain to him that the
8 payments that I had made, most of -- all the payments that I
9 had made are not shown on the itemized account. They did not
10 put them on the account.

11 THE COURT: Ms. Thom --

12 MS. THOMPSON: And we wanted to know why --

13 THE COURT: Ms. Thompson, stop. Stop.

14 When you were here last in court, you told the Court
15 that you had bank records that showed --

16 MS. THOMPSON: Yes.

17 THE COURT: Stop. Don't interrupt me, please -- that
18 you had bank records that show the payments made to the Trust.
19 You -- the Trust lawyer said they have no record of having
20 received the payments. You indicated it was made --

21 MS. THOMPSON: I show --

22 THE COURT: Stop, don't interrupt.

23 You indicated you had made the payments in the -- and
24 they had been credited against your account -- drawn against
25 your account. I asked whether you had the documents with you

RESIDENTIAL CAPITAL, LLC, et al.

22

1 in court; you told me you did not. I directed Mr. Wishnew
2 that, either, he or one of his colleagues go to your home to
3 meet with you -- that was agreeable with you -- for you to show
4 the Trust's lawyer your bank records showing that you had made
5 the payments.

6 That's why --

7 MS. THOMPSON: I --

8 THE COURT: -- Mr. Wishnew -- don't interrupt. That's
9 why Mr. Wishnew went to meet with you at a date you agreed on.

10 What you're now complaining about is the Trust's
11 records, those which are redacted to remove certain entries.
12 They've asserted it's based on attorney-client privilege. What
13 Mr. Wishnew has indicated to the Court is that you did not show
14 him any of your bank records showing that you had made the
15 payments.

16 Did you show him bank records establishing that you
17 had made the payments?

18 MS. THOMPSON: Yes, I did. I have it in my hand.

19 THE COURT: Well --

20 MR. WISHNEW: Your --

21 THE COURT: -- you didn't have it in your hand in
22 court.

23 Mr. Wishnew, did she show you records -- her bank
24 records that payments were made?

25 MR. WISHNEW: What she showed me was a check receipt,

RESIDENTIAL CAPITAL, LLC, et al.

23

1 like, essentially --

2 MS. THOMPSON: Yes, I did.

3 THE COURT: Ms. Thompson, stop. Let Mr. Wishnew
4 answer. I'll give you a chance to speak again.

5 Go ahead, Mr. Wishnew.

6 MR. WISHNEW: What I saw, Your Honor, was essentially
7 the copy or the receipt from a check, which showed that on a
8 certain date in 2008 a check was drawn to GMAC Mortgage. Now,
9 that would be a payment made pursuant to the repayment plan,
10 months, if not almost a year after the payment should have been
11 made. I did not see any checks or any bank records from the
12 spring of 2007 on account of the months that were missed and
13 led to the commencement of the foreclosure proceedings.

14 THE COURT: All right.

15 All right. I'm going to schedule an evidentiary
16 hearing. There's a disputed issue of fact, whether the
17 Thompsons made the payments. They claim they did. The Trust
18 claims they didn't. I will schedule an evidentiary hearing.
19 This seems to me to be fairly straight forward.

20 Monday, April 20th, at 2 p.m. Ms. Thompson --

21 MS. THOMPSON: Yes.

22 THE COURT: -- you need to bring with you any
23 records -- any bank records you have available to you that
24 shows the payments you made. Mr. Wishnew contends the payments
25 that you made in 2007 were in connection with an earlier

RESIDENTIAL CAPITAL, LLC, et al.

24

1 repayment plan, not the missed payments that this dispute
2 relates to. If your position is that you made those payments,
3 bring that evidence, be prepared to testify about it. I will
4 listen -- because this is not an evidentiary hearing today.
5 The Trust will have to bring a witness as well, and -- who can
6 testify about what their records show about the receipt of
7 payments, about a repayment plan, et cetera.

8 So I'm scheduling it for 2 p.m., Monday, April 20th,
9 2015, in my courtroom. You've been here before, Ms. Thompson,
10 so you know where that is.

11 MS. THOMPSON: Yes, I'm bringing a wheelchair this
12 time.

13 THE COURT: Okay, that's fine.

14 What records -- Mr. Wishnew, what records do you
15 expect to rely on at that hearing?

16 MR. WISHNEW: I would expect to rely on the loan
17 payment history --

18 THE COURT: Okay.

19 MR. WISHNEW: -- and the loan servicing notes, copies
20 of which have already been provided to Ms. Thompson. And when
21 she refer to the blacked out portions, that was the blacked out
22 portions of the loan servicing notes that we redacted for, what
23 we believed, were --

24 THE COURT: All right.

25 MR. WISHNEW: -- privileged.

RESIDENTIAL CAPITAL, LLC, et al.

25

1 THE COURT: What I would direct is, is that, Ms.
2 Thompson, you and the Trust lawyers, Mr. Wishnew, need to
3 exchange copies of any exhibits that you intend to rely on at
4 the hearing on April 20th.

5 Mr. Wishnew, I'm going to ask that you speak with Ms.
6 Thompson well in advance of that.

7 MR. WISHNEW: Um-hum.

8 THE COURT: And I would ask that you pre-mark the
9 Thompsons' exhibits, as well as your own so that each -- since
10 they don't have a lawyer --

11 MR. WISHNEW: Um-hum.

12 THE COURT: -- so that each exhibit has a unique
13 identifier, all right?

14 So Ms. Thompson, I -- what -- I want you to speak with
15 Mr. Wishnew and make sure that you exchange those exhibits by 5
16 p.m., April 15th.

17 And Mr. Wishnew, you bring copies of both your
18 exhibits and the Thompsons' exhibits to the hearing.

19 MR. WISHNEW: Absolutely, Your Honor.

20 THE COURT: And I --

21 MS. THOMPSON: I will e-mail -- I can e-mail them
22 today, if you'd --

23 THE COURT: Well, why --

24 MS. THOMPSON: -- like.

25 THE COURT: -- why don't you -- let me -- you speak

RESIDENTIAL CAPITAL, LLC, et al.

26

1 with Mr. Wishnew and see whether you can -- you work it out
2 between the two of you. I want to do this as -- with the least
3 inconvenience as possible to both sides, and I think it'll be
4 easier for Mr. Wishnew to present to the Court the pre-marked
5 exhibits.

6 So -- but anything you want to rely on, any documents
7 you wish to rely on at the hearing, you need to get them to Mr.
8 Wishnew. He'll speak with you, and you'll work out the timing
9 so that he can submit them all on the 15th. Okay?

10 MS. THOMPSON: Okay.

11 THE COURT: All right. Thank you very --

12 MS. THOMPSON: Thank you, Your Honor.

13 THE COURT: -- much, Ms. Thompson.

14 MR. WISHNEW: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Wishnew.

16 MR. WISHNEW: Your Honor, that brings us to the next
17 matter on today's agenda, item 3 on page 9, the ResCap Borrower
18 Claims Trust's objection to claim number 2397, filed by John
19 Satterwhite. I believe Mr. Satterwhite is on the phone today.

20 THE COURT: Mr. Satterwhite, are you on the phone?

21 MR. SATTERWHITE: Yes, sir, Your Honor.

22 THE COURT: All right.

23 MR. SATTERWHITE: Good morning.

24 THE COURT: Just -- I have to make a note on something
25 else, so just hang on for a second, okay?

RESIDENTIAL CAPITAL, LLC, et al.

27

1 MR. SATTERWHITE: Yes, sir.

2 MS. THOMPSON: I'm sorry; excuse me, Your Honor. This
3 is Elda Thompson again. We --

4 THE COURT: Oh, yeah, you're excused. You can -- you
5 don't have to stay on. You're welcome to, but you don't have
6 to.

7 MS. THOMPSON: All right. Thank you.

8 THE COURT: Thank you, Ms. Thompson.

9 MS. THOMPSON: Thank you, Your Honor.

10 THE COURT: Okay.

11 All right. I've finished with my notes.

12 So Mr. Wishnew, why don't you go ahead with your claim
13 objection, and then we'll let Mr. Satterwhite respond, okay?

14 MR. WISHNEW: Thank you, Your Honor.

15 This is the Borrower Trust claim's objection against
16 the claim -- or pertaining to the claim number 2397, filed by
17 John Satterwhite, which was filed at docket number 7990. Mr.
18 Satterwhite filed a response to the objection on March 3rd at
19 docket number 8280. The Trust filed a reply on March 26th,
20 filed at docket number 8363.

21 In support of the objection, the Borrower Trust
22 submitted a declaration by Kathy Priore, associate counsel of
23 the ResCap Liquidating Trust, attached as Exhibit 2 to the
24 objection. She also submitted a supplemental declaration in
25 further support of the objection, attached as Exhibit 1 to the

RESIDENTIAL CAPITAL, LLC, et al.

28

1 reply. Ms. Priore is appearing by telephone today and is
2 available to answer any questions the Court might have.

3 Mr. Satterwhite filed a general unsecured claim
4 designated as claim 2397 on November 5th, 2012 in the amount of
5 455,000 dollars. Essentially, Your Honor, this is a
6 claim -- the 455,000-dollar claim is made up of three
7 components. There is 100,000 dollars for compensatory damages,
8 350,000 dollars for punitive damages and 5,000 dollars for
9 attorneys' fees.

10 The crux of the dispute here, Your Honor, is what
11 liability, if any, GMAC Mortgage has on account of a
12 foreclosure sale that took place in April 2010. Mr.
13 Satterwhite has identified three bases for his claim. That is
14 fraud, implied covenant of good faith and fair dealing and
15 quiet title. It is the Trust's position that for the reasons
16 stated in our pleadings the claimant has not established, by a
17 preponderance of the evidence, a claim on any one of three
18 bases. At most --

19 THE COURT: I think the issue that -- so you know what
20 to address -- is whether there are disputed issues of fact that
21 require an evidentiary to be resolved and whether any of the
22 three theories for liability, quiet title, breach of covenant
23 of good faith and fair dealing or fraud --

24 MR. WISHNEW: Sure.

25 THE COURT: -- whether, as a matter of law, those

RESIDENTIAL CAPITAL, LLC, et al.

29

1 claims fail. But to the extent that the claims all fail as a
2 matter of law, the issue is -- this is not an evidentiary
3 hearing --

4 MR. WISHNEW: Right.

5 THE COURT: -- whether there are disputed issues of
6 fact that are going to require an evidentiary hearing.

7 MR. WISHNEW: I suggest the answer is, no, Your Honor.

8 THE COURT: Let me ask you to do this. Address,
9 first, the quiet title --

10 MR. WISHNEW: Sure.

11 THE COURT: -- because that seems to me to be
12 primarily an issue of law --

13 MR. WISHNEW: And that actually has been --

14 THE COURT: -- that's probably going to be resolved --

15 MR. WISHNEW: -- previously dealt with through a
16 demurrer motion filed in the Virginia courts, in which --

17 THE COURT: Pronounced demurrer, but --

18 MR. WISHNEW: Demurrer. By the time --

19 THE COURT: I only know because I practiced in
20 California for many years, and that's what they do out there.
21 That's the motion to dismiss.

22 MR. WISHNEW: By the time we actually get through and
23 fully reconcile all these claims, I promise I will actually be
24 able to pronounce demurrer.

25 So there was a demurrer action in --

RESIDENTIAL CAPITAL, LLC, et al.

30

1 THE COURT: There was even a demurrer, too.

2 MR. WISHNEW: Demurrer -- there was a
3 demurrer -- tomato/tomato, Your Honor.

4 There was a demurrer action in Virginia. There was a
5 ruling in GMAC Mortgage's favor on the quiet title action. So
6 at this point, we don't believe there is a valid cause of
7 action --

8 THE COURT: Well, your basic position is that neither
9 GMAC nor any of the other debtors assert any claim -- have
10 any --

11 MR. WISHNEW: Or have --

12 THE COURT: -- claim of title to the property.

13 MR. WISHNEW: Have any interest in the title.

14 THE COURT: Right.

15 MR. WISHNEW: Exactly, Your Honor.

16 THE COURT: You don't have any interest in the
17 property.

18 MR. WISHNEW: Exactly, Your Honor.

19 THE COURT: And your argument is that a quiet title
20 action can't lie where the defendant asserts no interest in the
21 property?

22 MR. WISHNEW: Absolutely correct, Your Honor.

23 THE COURT: Okay.

24 MR. WISHNEW: With regards to implied covenant of good
25 faith and fair dealing, Your Honor, to extent that GMAC

RESIDENTIAL CAPITAL, LLC, et al.

31

1 Mortgage, in its capacity as servicer, was simply enforcing the
2 terms of the contract, there isn't a separate cause of action
3 for a breach of the implied duty -- covenant -- the implied
4 covenant of good faith and fair dealing. It
5 can't -- essentially, the implied covenant of good faith and
6 fair dealing can't be the vehicle for rewriting and unambiguous
7 contract in order to create duties that, otherwise, do not
8 exist.

9 In support of that, Your Honor, we cite the Covra
10 Rubius (ph.) case, 2014 Westland 6968035. And that case cites,
11 in part, Skillstorm, Inv. V. Electric (sic) Data Systems, LLC,
12 666 F.2d 610 at 620, Eastern District of Virginia 2009. So
13 those -- we believe those two causes of action are easily dealt
14 with.

15 With regards to the claim for fraud --

16 THE COURT: Let me -- let's stop on the breach of
17 covenant of good faith and fair dealing. So what's the
18 contract that you're focusing on? What are they? Are there
19 one or more contracts?

20 MR. WISHNEW: Well, I think, Your Honor, it would be
21 the note here and, to the extent that there is a -- I mean,
22 it'd really be the relationship that -- to which Mr.
23 Satterwhite was a party would be the note and his obligation to
24 pay the note, consistent with taking out the loan he did, and
25 the GMAC Mortgage's rights as servicer to enforce the terms of

RESIDENTIAL CAPITAL, LLC, et al.

32

1 the note on behalf of the lender.

2 THE COURT: All right. Would you agree that GMAC was
3 the agent for the holder of the note?

4 MR. WISHNEW: Yes, Your Honor.

5 THE COURT: All right. And as an agent, would GMAC
6 have the authority to agree to a forbearance agreement?

7 MR. WISHNEW: Yes, Your Honor, yes.

8 THE COURT: All right. And could it agree orally to
9 forbear in timely payments under the note? Look, Mr.
10 Satterwhite -- there's disputed issues of fact about this, all
11 right?

12 MR. WISHNEW: Um-hum.

13 THE COURT: He contends that he spoke with
14 representatives of GMAC --

15 MR. WISHNEW: Um-hum.

16 THE COURT: -- and he didn't use this term, but
17 essentially agreed -- they would agree that they would forbear
18 that they wouldn't move forward with foreclosure. Foreclosure
19 was scheduled --

20 MR. WISHNEW: April 15th, Your Honor.

21 THE COURT: -- for April 15th, and -- bear with me a
22 second. He alleges that he spoke to someone from GMAC on April
23 12th, 2010. Foreclosure was scheduled for April 15th, 2010.
24 Am I right so far?

25 MR. WISHNEW: Yes, Your Honor.

RESIDENTIAL CAPITAL, LLC, et al.

33

1 THE COURT: And he alleges that in this phone
2 conversation he was promised that Bank of New York would not
3 foreclose on his home while Satterwhite applied for HAMP
4 modification. And he was advised how to do that. That's his
5 allegation, right?

6 MR. WISHNEW: Right, and that would be consistent with
7 the April 12th communication from GMAC Mortgage --

8 THE COURT: Right.

9 MR. WISHNEW: -- concerning the request for
10 documentation --

11 THE COURT: All right. And --

12 MR. WISHNEW: -- in further support of a workout
13 package.

14 THE COURT: -- the letter -- I'll get to the issue of
15 whether the letter was received or not. But there's an April
16 12th letter, right?

17 MR. WISHNEW: Yes, Your Honor.

18 THE COURT: And so he had to submit it within ten
19 days.

20 MR. WISHNEW: Yes, Your Honor.

21 THE COURT: Ten days from April 12th. It's not clear,
22 but it seems to me --

23 MR. WISHNEW: It's not clear.

24 THE COURT: -- if you send the letter on April 12th
25 and say submit it within ten days, the logical inference is ten

RESIDENTIAL CAPITAL, LLC, et al.

34

1 days --

2 MR. WISHNEW: Correct.

3 THE COURT: -- no sooner than ten days from April
4 12th.

5 MR. WISHNEW: No argument there, Your Honor.

6 THE COURT: But three days later, they were going to
7 have him foreclosed?

8 MR. WISHNEW: Correct, Your Honor.

9 THE COURT: All right. So if a loan servicer, as an
10 agent for the noteholder, had the authority to agree to
11 forbear, why wouldn't that -- and then didn't -- it didn't
12 because it -- three days later, it went ahead and foreclosed.
13 Why wouldn't that breach the implied covenant of good faith and
14 fair dealing? There -- and the Virginia cases, there's a split
15 in authority exactly about what -- whether Virginia recognizes
16 an implied covenant of good faith and fair dealing in the
17 residential mortgage loan context, at least it appears to me
18 there seems to be some sort -- the cases aren't uniform. You
19 would agree with that?

20 MR. WISHNEW: I would agree, Your Honor.

21 THE COURT: All right. So why hasn't Mr. Satterwhite
22 alleged a breach of the covenant of good faith and fair
23 dealing? He's very specific about that he talked to a GMAC
24 representative on April 12th. He says what his position is
25 about what they told him. They did send him a letter dated

RESIDENTIAL CAPITAL, LLC, et al.

35

1 April 15th -- or, excuse me -- yeah, they sent him a letter
2 telling him, submit your application in ten days. But they
3 went ahead and foreclosed before then.

4 MR. WISHNEW: Um-hum. And --

5 THE COURT: So why doesn't that state a breach of
6 covenant of good faith and fair dealing?

7 MR. WISHNEW: It doesn't state a breach of the implied
8 covenant of good faith and fair dealing because what this
9 really has amounted to -- or what this amounts to is a mistake,
10 an oversight.

11 THE COURT: Well, sometimes mistakes are breaches of
12 contracts, sometimes they're negligence of representation,
13 sometimes they're even fraud.

14 MR. WISHNEW: Well -- but it's fraud, Your Honor --

15 THE COURT: You say it was a mistake.

16 MR. WISHNEW: I say --

17 THE COURT: You say it was a mistake.

18 MR. WISHNEW: Yes.

19 THE COURT: Mr. Satterwhite, he doesn't say it was a
20 mistake. He says, they told me they wouldn't foreclose. They
21 would consider my HAMP loan modification. They told me how
22 much time I had to get it in, but then they just went ahead and
23 foreclosed. That's what he says. You have a different
24 position, I understand. I'm not resolving the dispute.

25 MR. WISHNEW: Right.

RESIDENTIAL CAPITAL, LLC, et al.

36

1 THE COURT: But --

2 MR. WISHNEW: I guess what we're trying to do, through
3 the objection, is recognizing that could be a disputed issue of
4 fact, is to frame for Mr. Satterwhite and for the Court what we
5 believe a limitation on damages here, which is to make -- to
6 essentially Mr. Satterwhite whole, restore him to -- provide
7 him with the equity that he lost at the time of the foreclosure
8 sale. And so if there is a mistake, then the fact of the
9 matter is what his damages are, are a little bit over 40,000
10 dollars as opposed to 100,000 dollars for compensatory damages,
11 350,000 dollars for punitive damages --

12 THE COURT: Well, let me stop --

13 MR. WISHNEW: -- and --

14 THE COURT: Let me stop you right there.

15 Mr. Satterwhite, in other disputes in the ResCap case,
16 I have held, including in writing, that punitive damages are
17 not available from the Trust because there's a fixed amount
18 available for borrowers' claims, every additional dollar of
19 claims against that amount is that much less available to
20 satisfy the claims of other borrowers. And so I've held, in
21 connection with the Reed claim -- R-E-E-D, I believe it
22 was -- that punitive damages aren't available.

23 That issue has also come up in connection with the
24 Mack claim, M-A-C-K. And there, I don't have a written
25 opinion. I ruled orally from the bench that punitive damages

RESIDENTIAL CAPITAL, LLC, et al.

37

1 are not available. So I'm -- I've ruled consistently in this
2 case with respect to that, so I'm not saying what
3 damages -- what compensatory damages you may be entitled to
4 recover. But you're not going to be able to recover any
5 punitive damages. I just wanted to interrupt you for that
6 purpose --

7 MR. WISHNEW: No, I appreciate that.

8 THE COURT: -- Mr. Wishnew. You've obviously lived
9 through this case. Mr. Satterwhite has not.

10 MR. WISHNEW: Understood.

11 THE COURT: And I've already ruled previously with
12 respect to the punitive damage issue.

13 MR. WISHNEW: No, I appreciate Your Honor's
14 clarification on that point.

15 So Your Honor, that's really the sum and substance --

16 THE COURT: May I ask you this? if -- I want to make
17 clear that I don't anticipate ruling now whether Mr.
18 Satterwhite could recover for breach of covenant of good faith
19 and fear dealing, which is a contract claim, or fraud
20 claim -- two types: actual and constructive. Would there be a
21 difference in the damages remedy --

22 MR. WISHNEW: Absolutely not, Your Honor.

23 THE COURT: -- available under any of those three
24 theories of recovery?

25 MR. WISHNEW: It's the borrowers trust's position that

RESIDENTIAL CAPITAL, LLC, et al.

38

1 it isn't -- there is no difference in recovery; that the
2 recovery, regardless of whether we are found responsible for
3 fraud or found responsible for implied covenant of breach
4 of -- breach of the implied covenant of good faith and fair
5 dealing, the remedy is the same: making Mr. Satterwhite whole,
6 which is restoring him or providing a claim for the equity in
7 the property at the time of the foreclosure.

8 THE COURT: So address the fraud claim -- there are
9 two theories in the fraud claim, right, actual or construction
10 fraud.

11 MR. WISHNEW: Yes, Your Honor. That was -- since it
12 wasn't clear to us what -- whether we were being -- or the
13 claim was for actual or constructive fraud, we addressed both,
14 Your Honor. to prevail on a cause of action for actual fraud,
15 the plaintiff or, in this case, the claimant, Mr. Satterwhite,
16 must prove by clear and convincing evidence a false
17 representation of material fact --

18 THE COURT: Virginia applies the clear and convincing
19 evidence standard?

20 MR. WISHNEW: Yes, Your Honor, cited Richmond
21 Metropolitan Authority v. McDevitt Street Bovis, Inc., 507
22 S.E.2d 344 at 346, and I think it's the Supreme Court of
23 Virginia 1998.

24 THE COURT: Okay.

25 MR. WISHNEW: Made intentionally and knowingly, with

RESIDENTIAL CAPITAL, LLC, et al.

39

1 intent to mislead, reliance on the party misled a resulting
2 damage to the party.

3 Frankly, Your Honor --

4 THE COURT: Let me ask you this. Am I correct that
5 the Covra Rubius case, which you rely on with respect to actual
6 fraud, also recognizes that reckless disregard for the truth
7 satisfies the intent requirement for actual fraud?

8 MR. WISHNEW: Just one moment, Your Honor.

9 THE COURT: That's at Star 5 -- 4.

10 MR. WISHNEW: Yes, correct. Yes --

11 THE COURT: Reckless abandon --

12 MR. WISHNEW: -- yes.

13 THE COURT: -- and --

14 MR. WISHNEW: Yes.

15 THE COURT: -- disregard for the truth.

16 MR. WISHNEW: That is correct, Your Honor, yes.

17 THE COURT: So that would -- reckless disregard for
18 the truth, which is not uncommon, but that would satisfy the
19 Virginia requirement for --

20 MR. WISHNEW: For actual fraud, Your Honor.

21 THE COURT: -- intent? Okay.

22 MR. WISHNEW: Yes, Your Honor.

23 Given that the actions here were simply, what the
24 Borrower Trust contends is, a mistake --

25 THE COURT: Well, we'll see. I mean, I don't know

RESIDENTIAL CAPITAL, LLC, et al.

40

1 whether it was or not. I can understand from Mr. Satterwhite's
2 standpoint -- his argument that it was an egregious mistake
3 when you talk to GMAC on April 10th, facing an April 15th
4 foreclosure date, they tell you, according to him, that they
5 wouldn't go forward with the foreclosure on April 15th, that he
6 had ten days to submit the HAMP modification package, and then
7 they just go ahead with foreclosure.

8 I can unders -- I'm not making any determination about
9 it, but I can understand that he would argue that shows
10 reckless disregard for the truth.

11 MR. WISHNEW: I unders -- yes, I understand his
12 position. And obviously, we don't agree with the position. We
13 feel that this was simply an internal miscommunication with
14 an --

15 THE COURT: You're going to have people --

16 MR. WISHNEW: -- unfortunate --

17 THE COURT: -- who miscommunicated, come here and
18 testify?

19 MR. WISHNEW: I'm sorry, Your Honor?

20 THE COURT: You're going to have the internal GMAC
21 people --

22 MR. WISHNEW: We would have --

23 THE COURT: -- who are going to come here and testify
24 about this mistake that they made?

25 MR. WISHNEW: Your Honor, if this goes to an

RESIDENTIAL CAPITAL, LLC, et al.

41

1 evidentiary hearing, we would be -- we would produce someone
2 with knowledge of the debtors' servicing practices, who could
3 address and interpret the servicing notes and explain what
4 happened to --

5 THE COURT: That's what you're relying on is an
6 interpret -- somebody's going to interpret the servicing notes
7 rather than somebody who actually did it?

8 MR. WISHNEW: Your Honor, with the limited resources
9 that the borrower claims trust and the liquidating trust have
10 right now, there are a fixed number of people who are
11 available --

12 THE COURT: Sure.

13 MR. WISHNEW: -- to testify, and so the best we can do
14 is rely upon --

15 THE COURT: That may be your problem at an evidentiary
16 hearing.

17 MR. WISHNEW: It -- I acknowledge that, Your Honor.
18 That's just the inherent problem that the Trust has going
19 forward. as a liquidating equity with limited resources, it
20 can -- it has a fixed number of personnel that it can utilize,
21 and it -- the best it can do is utilize its contemporaneous
22 business records to substantiate its position.

23 THE COURT: You -- well, your best version of events
24 is that GMAC made a serious mistake that resulted in Mr.
25 Satterwhite's home being foreclosed on April 15th, 2010, right?

RESIDENTIAL CAPITAL, LLC, et al.

42

1 MR. WISHNEW: Yes, Your Honor.

2 THE COURT: Okay.

3 All right. Talk about constructive fraud.

4 MR. WISHNEW: Sure. So Your Honor, a party claiming
5 constructive fraud in the context of a contractual relationship
6 must either show a duty existing outside the scope of the
7 contract or a fraud in the inducement of the contract, again
8 citing to the Covra Rubius case at Star 5. It's the Trust's
9 position that Mr. Satterwhite hasn't alleged either of these
10 elements. So in that regards, there is not necessarily a claim
11 for constructive fraud.

12 THE COURT: Let me ask you this -- a couple of
13 hypothetical questions. I think -- not with respect to
14 Virginia law but in some of the ResCap claim objections, I
15 think with respect to other claims for negligent
16 misrepresentation, which is the equivalent of a negligent
17 misrepresentation claim -- would you agree with that?

18 MR. WISHNEW: Um-hum.

19 THE COURT: The construct fraud claim here is the
20 equivalent of what other states would consider a negligent
21 misrepresentation claim. Is that right?

22 MR. WISHNEW: I believe so, Your Honor.

23 THE COURT: All right. And ordinarily, the loan
24 servicer doesn't owe a duty to the borrower.

25 MR. WISHNEW: Agreed, Your Honor.

RESIDENTIAL CAPITAL, LLC, et al.

43

1 THE COURT: All right. And I haven't seen any cases
2 under Virginia law saying that they do.

3 MR. WISHNEW: Correct, Your Honor.

4 THE COURT: Does that change if the loan servicer
5 communicates directly with the borrower here or, allegedly,
6 orally? It's one thing to say you don't have a duty to speak,
7 okay, or to do something. Once you affirmatively take the step
8 of engaging in a discussion with Mr. Satterwhite, specifically
9 about whether you're going to go forward with foreclosure or
10 not go forward with foreclosure --

11 MR. WISHNEW: Um-hum.

12 THE COURT: -- whether you're going to consider a HAMP
13 modification or not consider a HAMP modification, let's assume
14 that he's able to establish that on April 10th he spoke with
15 GMAC -- a representative of GMAC who said we won't
16 foreclosure -- get a HAMP modifi -- get a modification in.
17 You've got to get it in within ten days, we won't go forward
18 with the foreclosure. Does that create a duty on the party of
19 GMACM such that a negligent misrepresentation claim would lie?

20 I don't remember -- when this issue has come up before
21 me --

22 MR. WISHNEW: Sure.

23 THE COURT: -- in the past, not involving Virginia law
24 but other states' law, people tried to assert that the loan
25 servicer owed a duty just because it was the loan servicer.

RESIDENTIAL CAPITAL, LLC, et al.

44

1 MR. WISHNEW: Sure.

2 THE COURT: And I think I've said no.

3 MR. WISHNEW: Right.

4 THE COURT: But I don't -- and I've got to go back and
5 look some more --

6 MR. WISHNEW: Yeah.

7 THE COURT: -- but I don't remember that coming up in
8 the context of affirmative communications between the loan
9 servicer and the borrower.

10 MR. WISHNEW: I don't know that a communication all of
11 a sudden takes -- somehow creates a special relationship for
12 that --

13 THE COURT: When you tell the --

14 MR. WISHNEW: -- loan servicer.

15 THE COURT: -- borrower we won't foreclose if you get
16 us a HAMP loan modifi -- we won't guarantee you get a
17 modification, but we're not going to foreclose five days from
18 now if you get us a HAMP application --

19 MR. WISHNEW: Well, I mean, that --

20 THE COURT: -- within ten day -- you -- I think you've
21 acknowledged -- I think that -- putting aside the Satterwhite
22 circumstance, it was GMAC's general practice not to foreclose
23 while a loan modification was being considered.

24 MR. WISHNEW: That's --

25 THE COURT: Is that true?

RESIDENTIAL CAPITAL, LLC, et al.

45

1 MR. WISHNEW: That is correct, Your Honor, yes.

2 THE COURT: Okay. So that's your general practice.

3 Here, there may be disputed elements in the communica -- I know
4 the service note said no guarantee that we won't foreclose.

5 MR. WISHNEW: Right.

6 THE COURT: That may be ambiguous because -- well,
7 we'll have to deal with that at an evidentiary hearing. But
8 there are two sides to this story; I would certainly
9 acknowledge that.

10 MR. WISHNEW: Okay.

11 THE COURT: Look, I'm troubled. You can call that a
12 mistake. It was -- clearly, it was a mistake. Whether it's an
13 actionable mistake is a different issue.

14 MR. WISHNEW: Um-hum.

15 THE COURT: And if so, on what theory is it
16 actionable? And then, if it is actionable, what are the
17 circumstances?

18 MR. WISHNEW: Right.

19 THE COURT: What's the measure of damages?

20 MR. WISHNEW: Correct, Your Honor.

21 THE COURT: Okay. can you -- I didn't see any
22 authority cited for the proposition that the loan servicer has
23 no duty to the borrower even if the loan servicer undertakes to
24 communicate to the borrower we won't do certain things if you
25 do certain things.

RESIDENTIAL CAPITAL, LLC, et al.

46

1 MR. WISHNEW: I don't know that we specifically
2 addressed that issue, Your Honor.

3 THE COURT: I think what I'm likely to do -- I don't
4 want to go through another round of briefing at this stage.

5 I haven't heard from Mr. Satterwhite yet, and I will.
6 But I -- I mean, it's clear to me this is going forward for an
7 evidentiary hearing.

8 MR. WISHNEW: Um-hum.

9 THE COURT: The facts are going to be the facts are
10 going to be the facts. Which of these legal theories, if any,
11 do -- are -- is at -- are the facts actionable --

12 MR. WISHNEW: Um-hum.

13 THE COURT: -- I'll have to determine. I think that
14 Mr. Satterwhite has certainly alleged enough to proceed,
15 if -- on nothing else, on the actual fraud. Whether he could
16 make it out or not, I don't know. I -- it does seem to me
17 that -- and I'm not citing the issue today. he may well be
18 able to proceed on the constructive fraud theory,
19 whereas -- it's undisputed here, GMAC communicated with him and
20 told him -- gave him ten days to do a loan modification
21 application.

22 And again, I'm not deciding today whether that would
23 be actionable or breach of covenant of good faith and fair
24 dealing, but, initially, my reaction is the remedy -- if he
25 makes out any of those three claims, the remedy's going to be

RESIDENTIAL CAPITAL, LLC, et al.

47

1 the same --

2 MR. WISHNEW: Right.

3 THE COURT: -- essentially, here.

4 Let me hear from Mr. Satterwhite. Go ahead, Mr.
5 Satterwhite.

6 MR. SATTERWHITE: Thank you, Your Honor. Good
7 morning, sir. I appreciate you giving me the chance to speak.

8 I am also blind in one eye and low vision in the
9 other, and I do have a complaint, not with the Court, but with
10 the counsel of Morrison & Morrison (sic) because they keep
11 sending me paperwork after my deadline date to get into you.
12 And I don't have time nor did I have resources to pay for a
13 lawyer, because I haven't worked in five years since I became
14 blind. And it was my fault for falling in the arrears of only
15 1,000 dollars when I had 70,000 dollars' worth of equity.

16 They said -- and my property was bad. So I requested
17 further modification, and GMAC told me that I didn't have to
18 worry about it as long as I got the paperwork in. So I didn't
19 seek any more counsel or help to try to stop the foreclosure
20 because I believed in what they told me. And when the plan
21 came on TV, and I called GMAC and asked them, I believed what
22 they told me. I'm a ex-Green Beret for fourteen years, with an
23 honorable discharge. I didn't ask them to give me anything.
24 I've always taken care of myself.

25 But I just asked them to treat me fair, under the

RESIDENTIAL CAPITAL, LLC, et al.

48

1 Constitution, of we the people, in God we trust, and I believed
2 what they said, Your Honor. So yes, I feel they intentionally
3 did it. And when I went to the foreclosure on the court steps,
4 a man told me the property didn't sell and that I was okay.
5 Then, I find out that Bank of New York Mellon bought -- was the
6 highest bidder and bought the property. So this is why I feel
7 that, in good faith and proof, I was misled, because my house
8 used to be one of the nicest houses on the block. Now, it's
9 rundown. I don't have the -- or didn't have the money to fix
10 it. And why would I go and put money in it now when you've
11 taken my name off the deed?

12 And I also presented evidence in Richmond, which I
13 still have a fraud case. The judge told my lawyer -- when
14 Morrison & Morrison contacted me, they said, well, how did you
15 come up with the figures? I said, sir, I didn't come up with
16 the figures. I was able to borrow money from my family and the
17 church to get a lawyer to help fight this. And he came up with
18 the figures. I didn't come up with the figures. And when the
19 case went to court, the judge in Richmond said, he felt that I
20 had proven enough for fraud and then told my lawyer to go back
21 and figure up the damages. And he was the one that figured up
22 the damages, but he took so long in figuring out what the
23 damages was.

24 The next thing I know GMAC had filed bankruptcy, and I
25 my lawyer said they filed bankruptcy. Then, he came to me and

RESIDENTIAL CAPITAL, LLC, et al.

49

1 said I can't represent you because I'm a Virginia lawyer, and
2 this in the State of New York, which is a different bar
3 association, which I understood. But Morrison & Morrison
4 never, Your Honor, sent -- I don't understand why they sent
5 me -- I got paperwork yesterday or Saturday to be in court for
6 today. I got paperwork on Friday, which was really Saturday
7 morning for -- to be in court for today.

8 You see what I'm saying? And all my paperwork -- and
9 I do apologize, and I thank your secretary, because I have not
10 been treated fair even in getting my paperwork to give me ample
11 time, knowing that I'm disabled, knowing that I'm handicapped
12 and being able to even get someone to help me try to figure
13 this mess out or what I'm supposed to do.

14 THE COURT: May I ask you --

15 MR. SATTERWHITE: Do you understand what I'm saying,
16 Your Honor?

17 THE COURT: May I ask you a few ques --

18 MR. SATTERWHITE: And --

19 THE COURT: Mr. Satterwhite, may I ask you --

20 MR. SATTERWHITE: Yes, sir.

21 THE COURT: -- a few questions? Are you still living
22 in the property?

23 MR. SATTERWHITE: Yes, sir, I never left.

24 THE COURT: Okay.

25 MR. SATTERWHITE: Hello?

RESIDENTIAL CAPITAL, LLC, et al.

50

1 THE COURT: Yes, I'm here. I'm here.

2 MR. SATTERWHITE: Yes, sir. They sent somebody with a
3 gun to tell me to get out, and I told -- I said, sir, I'm not
4 going nowhere, so I went back to the court. And the judge here
5 in Richmond told me I didn't have to get out. And because they
6 filed bankruptcy, which he was getting ready to rule on the
7 fraud, but because they filed bankruptcy, he can't rule because
8 it's in bankruptcy court and it's still sitting here in
9 Richmond waiting on what your decision is in the bankruptcy
10 court. And then, I can go back for the fraud.

11 But that's how the case -- so then, when I went to
12 court here, they said, no, you got to wait now because they
13 filed bankruptcy.

14 THE COURT: Okay.

15 MR. SATTERWHITE: So I'm, you know --

16 THE COURT: Anything else --

17 MR. SATTERWHITE: -- I just --

18 THE COURT: -- any --

19 MR. SATTERWHITE: -- trust and believe in God, and I'm
20 thankful. But sir, this is what I risked my life for as a
21 Green Beret to protect and serve this country on foreign and
22 American soil. But they do not have the right to be above the
23 law and then have expensive lawyers to hide under the law. And
24 I appreciate everything. And that's just the truth, Your
25 Honor.

RESIDENTIAL CAPITAL, LLC, et al.

51

1 THE COURT: All right. Mr. Wishnew, do you want to
2 add anything?

3 MR. WISHNEW: No, Your Honor.

4 THE COURT: All right. I'm going to enter a written
5 order to the following effect. First, sustaining the objection
6 of the quiet title claim.

7 What I mean by that, Mr. Satterwhite, one of the
8 claims you've asserted is to the -- the legal terminology's
9 quiet title to the property. But because the debtors nor the
10 Trust have any interest in the property, that cause of action
11 would fail.

12 With respect to your other claims, the breach of
13 covenant --

14 MR. SATTERWHITE: Can I ask a question, Your Honor?

15 THE COURT: No, let me finish and then I'll give you a
16 chance.

17 MR. SATTERWHITE: Yes, sir.

18 THE COURT: Breach of covenant of good faith and fair
19 dealing, I'm overruling the objection without prejudice. I'm
20 not deciding at this stage whether --

21 MR. SATTERWHITE: Yes, sir.

22 THE COURT: -- a claim for breach of covenant of good
23 faith and fair dealing would lie under Virginia law. And it's
24 Virginia law that controls.

25 As the Court observed in some of my questioning

RESIDENTIAL CAPITAL, LLC, et al.

52

1 earlier of Mr. Wishnew, it does seem to me that the loan
2 servicer's the agent of the noteholder and would have authority
3 to enter into a forbearance agreement. That's -- Mr. Wishnew
4 has basically acknowledged that to be the case. The facts
5 alleged by Mr. Satterwhite would support the argument that he
6 loan servicer, as agent for the noteholder, agreed to forbear
7 and, instead of forbearing, three days later went forward with
8 the foreclosure. And that could well support a claim for
9 breach of covenant of good faith and fair dealing.

10 Virginia law is unclear. Virginia law will control.
11 I will defer an ultimate ruling on the breach of covenant of
12 good faith and fair dealing claim until we have an evidentiary
13 hearing.

14 With respect to the fraud claim, there are two types
15 of fraud that the Court has to consider: actual fraud, and the
16 Court finds that there are disputed issues of fact as to
17 whether GMAC acted with reckless disregard for the truth,
18 assuming, for purposes of -- at this stage of the proceeding
19 that Mr. Satterwhite's assertions of fact are correct that they
20 told him they wouldn't foreclose if he got his HAMP loan
21 modification application in within ten days, but three days
22 later, they went ahead and foreclosed anyway. That would
23 certainly support a claim for actual fraud.

24 With respect to the issue of whether the facts would
25 also support a claim for constructive fraud, the Court is going

RESIDENTIAL CAPITAL, LLC, et al.

53

1 to defer ruling on that issue. I haven't been provided with
2 authority about the one issue that bothers me. While
3 ordinarily a loan servicer does not have a duty to the
4 borrower, whether that would be true under Virginia law in a
5 circumstance where the loan servicer affirmatively represented
6 to the borrower that it would take certain action or not take
7 certain action, whether that would give rise to a duty on the
8 part of the loan servicer that would support a claim for
9 constructive fraud, which essentially appears to be the
10 equivalent of a claim for negligent misrepresentation.

11 MR. SATTERWHITE: Yes, sir.

12 THE COURT: At best, the Trust acknowledged that GMAC
13 made a mistake. It clearly made a mistake. Mr. Satterwhite
14 certainly alleges that it was a lot more than a simple mistake;
15 that it was either actual fraud or constructive fraud. So it's
16 going to be necessary for the Court to go forward with an
17 evidentiary hearing.

18 In the circumstances here, Mr. Wishnew, I'm not going
19 to issue a lengthy opinion. I'm going to simply enter an order
20 and it'll refer to the record. I've sort of explained what's
21 on my mind here.

22 Mr. Satterwhite, I think that -- what I would hope
23 would happen is that you and Mr. Wishnew or one of his
24 colleagues would try and engage in some further settlement
25 discussions to see whether you can resolve this issue without

RESIDENTIAL CAPITAL, LLC, et al.

54

1 having to go forward with an evidentiary hearing. If we have
2 to go forward --

3 MR. SATTERWHITE: Yes, sir.

4 THE COURT: -- with an evidentiary hearing, you're
5 going to have to do that here. You're going to have to come to
6 New York for that. I don't have --

7 MR. SATTERWHITE: Yes, sir, Your Honor.

8 THE COURT: -- trials with witnesses testifying by
9 telephone.

10 MR. SATTERWHITE: Okay.

11 THE COURT: So you're living in Richmond, Virginia,
12 and --

13 MR. SATTERWHITE: Yes, sir.

14 THE COURT: -- I will ask you and Mr. Wishnew or one
15 of his colleagues to discuss, if we have to go forward to an
16 evidentiary hearing, that you confer and try to do this at a
17 time that's convenient for you and the Trust and for the Court.

18 So you can talk to Mr. Wishnew or his colleagues about
19 that. I really do hope --

20 MR. SATTERWHITE: Yes, sir.

21 THE COURT: -- that you'll see whether you can reach a
22 resolution of this. I said earlier, Mr. Satterwhite, one of
23 the big dollar items that you were seeking in your claim is
24 punitive damages. It's just not available. I've determined --

25 MR. SATTERWHITE: Yes, sir.

RESIDENTIAL CAPITAL, LLC, et al.

55

1 THE COURT: -- in a number of matters here, so the
2 question is, what compensatory -- what actual damages can you
3 establish? I'm not going to elaborate further on that. I'm --

4 MR. SATTERWHITE: Yes, sir, I understand.

5 THE COURT: I didn't prepare to do that today. You
6 ought to engage in some discussions with Mr. Wishnew or his
7 colleagues.

8 Mr. Wishnew --

9 MR. SATTERWHITE: Yes. Can I ask you one more
10 question --

11 THE COURT: Yes.

12 MR. SATTERWHITE: -- sir?

13 THE COURT: Go ahead, Mr. Satterwhite.

14 MR. SATTERWHITE: I didn't understand where -- if Mr.
15 Jeffrey Stephans (sic) had robo-signed paperwork and the
16 paperwork, which was notarized by Ms. Reinhart, which was in
17 the Washington Post that he was indicted on and that the
18 paperwork was robo-signed, that he sent 10,000 loans to her, and
19 she admitted that she stamped them and sent them back through
20 the mail, then how could it be a legal foreclosure if the
21 paperwork was bogus?

22 THE COURT: Let me address -- I -- and I had intended
23 to address the issue of Mr. Jeffrey Stephan.

24 MR. SATTERWHITE: Yes, sir.

25 THE COURT: There're some -- a number of things that

RESIDENTIAL CAPITAL, LLC, et al.

56

1 are not clear, Mr. Wishnew, about the paperwork that supported
2 the foreclosure. And that certainly would be an issue for the
3 evidentiary hearing.

4 MR. SATTERWHITE: Yeah, all I'm saying, if he wasn't a
5 valid --

6 THE COURT: Yeah, let me -- I'm collecting my thought.
7 I have some more to say about it, Mr. Satterwhite. Okay?

8 MR. SATTERWHITE: Yes, sir.

9 THE COURT: Just give me a second.

10 MR. SATTERWHITE: Yes, sir.

11 THE COURT: The Trust, for the first time, addressed
12 the issue of robo signing in its reply, arguing that the
13 allegations cannot be construed against the debtors because
14 Stephan was acting in his capacity as a limited signatory on
15 behalf of Bank of New York pursuant to a power of attorney.
16 Mr. Satter -- because it was raised in the reply, Mr.
17 Satterwhite didn't have an opportunity to respond to those
18 arguments.

19 Additionally, the Court observes that the Trust's
20 argument is not completely supported by the documentation
21 provided. The Trust has not provided the copy of the power of
22 attorney, instead, only relies on the signature page of the
23 foreclosure deed as evidence that Stephan was not acting on
24 behalf of any of the debtors. I actually looked yesterday.
25 There are five of my opinions that refer to conduct by Mr.

RESIDENTIAL CAPITAL, LLC, et al.

57

1 Stephan -- five published opinions that refer to Mr. Stephan,
2 so the Court's very familiar with Mr. Stephan.

3 Stephan's signature block reads, "limited signing
4 officer of", and then there's -- it's illegible -- "LLC,
5 attorney in fact, Residential Funding Company. Bank of New
6 York is not an LLC and it's not a debtor. The document that
7 the Trust provided doesn't provide sufficient evidence on whose
8 behalf Stephan was signing. It can't be disputed that
9 Stephan -- he was an employee of GMAC. He may have -- through
10 MERS, have had authority in certain circumstances. Whether
11 there was a power of attorney that gave him certain authority,
12 that has not been provided to the Court.

13 So Mr. Satterwhite's quite correct that the proceeding
14 with his claims, be they breach of covenant of good faith and
15 fair dealing, fraud, either actual fraud or constructive fraud,
16 one of the issues -- one of the factual issues on which -- let
17 me be clear, the Trust is going to bear the burden of proof
18 with respect to Mr. Stephan, not Mr. Satterwhite. The facts
19 are within the Trust's control. Sufficient issues have been
20 raised in other matters about Mr. Stephan's authority, what he
21 signed. I don't know who the notary was. Was the
22 notary -- did the notary actually see Stephan come and sign in
23 her presence? I don't know. I don't have those facts.

24 But Mr. Satterwhite, thank you for raising the issue,
25 because I did intend to address it. Go ahead --

RESIDENTIAL CAPITAL, LLC, et al.

58

1 MR. SATTERWHITE: Thank you, Your Honor.

2 THE COURT: -- Mr. Satterwhite. Anything else you
3 want to add?

4 MR. SATTERWHITE: No, sir. Thank you. And God bless.
5 I appreciate all your assistance --

6 THE COURT: Okay.

7 MR. SATTERWHITE: -- and help.

8 THE COURT: Mr. Wishnew, this matter ought to be
9 settled.

10 MR. WISHNEW: I recognize that, Your Honor.

11 THE COURT: Okay.

12 MR. WISHNEW: I don't -- I recognize that.

13 If I can add just one point of clarification.

14 THE COURT: Let me just raise one other thing.

15 Mr. Satterwhite, you can proceed --

16 MR. SATTERWHITE: Yes, sir.

17 THE COURT: -- without a lawyer. That's certainly
18 your prerogative. There are many lawyers who appear in this
19 court who are not members of the New York bar. I've let them
20 appear by telephone, and I've let them appear -- they have
21 to -- if they come here, they have to -- there's an application
22 they have to make. They don't have to be a member of the New
23 York bar. I just -- what -- you're doing pretty well on your
24 own. Let me just tell you, okay?

25 MR. SATTERWHITE: Thank you sir. God bless.

RESIDENTIAL CAPITAL, LLC, et al.

59

1 THE COURT: Okay. Mr. Wishnew, something you wanted
2 to add before we finish the record on Satterwhite?

3 MR. WISHNEW: Yes, please, Your Honor.

4 With regards to the question about the Stephan
5 signatures and the question about who he was signing for, I
6 wanted to just make one point.

7 MR. SATTERWHITE: Yes.

8 MR. WISHNEW: So at Exhibit A to the Priore
9 declaration in support of the reply, Your Honor mentioned that
10 there's a -- it's Xed out, and there's a LLC afterwards, so
11 it's not clear who Mr. Stephan's signing for. I would just
12 note that, on the line underneath, it says Residential Funding
13 Company, so it's intended to read, "Jeffrey Stephan, limited
14 signing officer of Residential Funding Company, LLC, attorney
15 in fact". And that same point is also repeated --

16 THE COURT: Are you saying Residential Funding Company
17 was attorney in fact for Bank of New York?

18 MR. WISHNEW: As master servicer, which I think we've
19 pointed out in our reply, yes, Your Honor.

20 THE COURT: Well, it's an open issue.

21 MR. WISHNEW: Okay. I just --

22 THE COURT: Be prepared --

23 MR. WISHNEW: I just want to --

24 THE COURT: Be prepared to put on evidence.

25 MR. WISHNEW: I recognize that, Your Honor. I just

RESIDENTIAL CAPITAL, LLC, et al.

60

1 want to make sure the record reflected --

2 THE COURT: That's fine. Okay.

3 MR. WISHNEW: Thank you, Your Honor.

4 THE COURT: All right. Thank you very much, Mr.

5 Satterwhite. So you're excused, okay?

6 MR. SATTERWHITE: Thank you. God bless, sir.

7 THE COURT: All right. Thank you.

8 MR. WISHNEW: Your Honor, that brings us to item 4 on
9 today's agenda, the eighty-second omnibus claims objection. I
10 will turn the podium over to my colleague, Mr. Rosenbaum.

11 THE COURT: Okay.

12 MR. ROSENBAUM: Your Honor, Norm Rosenbaum for the
13 ResCap Borrower Claims Trust.

14 Your Honor, this is the Borrower Trust's eighty-second
15 omnibus objection to claims, no liability borrower claims.
16 It's filed at docket number 8042. It was filed on January
17 29th, 2015. Your Honor, through this objection, the Borrower
18 Trust seeks to expunge eighteen proofs of claim that do not
19 represent valid pre-petition claims against any of the debtors
20 because they have not proven by a preponderance of the evidence
21 any specific wrongdoing by any debtor.

22 The Borrower Trust has thoroughly examined the
23 debtors' books and records in an effort to validate the
24 accuracy of the allegations made in the responses in the claims
25 at issue and determined that the books and records do not show

RESIDENTIAL CAPITAL, LLC, et al.

61

1 any liability owing to any of the respondents.

2 Responses to the objection were due on March 2nd. The
3 Borrower Trust received four responses. We were planning on
4 addressing three of them today. One is claim number 9060,
5 filed by Michael Boyd, that's at docket number -- the responses
6 were at docket numbers 8190 and 8191; claim number 1142, filed
7 Steven [Rih'-gel] or [Re'-gal], that's at docket number -- his
8 response is at docket number 8101; and claim number 4497, filed
9 by Herold Gay, and that's at docket number 8188.

10 The Trust also received a response from a Mr. Dlin.
11 He's a holder of claim number 3732, and that'll be addressed at
12 the April 16th hearing.

13 I believe, at the outset of the hearing, Mr. Gay made
14 an appearance. I don't think I heard appearances from anyone
15 or individually on behalf of Mr. Boyd or Mr. Rigel.

16 THE COURT: Mr. Rigel, are you on the phone?

17 Mr. Boyd, are you on the phone?

18 Mr. Gay, are you on the phone?

19 MR. GAY: Yes, I am holding.

20 THE COURT: All right, thank you.

21 All right. So first, with respect to the fourteen
22 uncontested claims, the objection's sustained.

23 MR. ROSENBAUM: Thank you, Your Honor.

24 THE COURT: And as to Din -- Dlin, D-L-I-N, that's
25 adjourned to April 16th.

RESIDENTIAL CAPITAL, LLC, et al.

62

1 Let's go forward with -- let's do Mr. Gay first since
2 he's on the phone, okay?

3 MR. ROSENBAUM: Certainly, Your Honor.

4 Your Honor, we've outlined the --

5 THE COURT: Before you go ahead, Mr. Rigel, are you on
6 the phone?

7 MR. RIGEL: I am.

8 THE COURT: All right. So Rigel is. So -- and it's
9 Ms. Gay? Am I correct about that?

10 MR. GAY: Mr. Gay.

11 THE COURT: Mr. Gay? Okay, thank you.

12 MR. GAY: Yes.

13 THE COURT: All right. We'll go forward and ahead
14 with Mr. Gay's first, and then we'll do Mr. Rigel, okay?

15 MR. ROSENBAUM: Your Honor, we've outlined the facts
16 surrounding this mortgage in the response. I think the sum and
17 substance of it is, is that Mr. Gay's allegation and proof of
18 claim and his response relates to the origination of the loan
19 and allegations as to the interest rate and the note that he
20 signed. None of the debtors were an originator of this loan.
21 It was subsequently purchased and -- by debtor and assigned
22 into a securitization, but we don't have any origination
23 liability for this loan. And nothing in Mr. Gay's responses
24 indicated otherwise.

25 I think Mr. Gay also has taken a position that -- as

RESIDENTIAL CAPITAL, LLC, et al.

63

1 other borrowers have and Your Court has ruled on, that through
2 the effect of the plan and the confirmation order that his
3 claim was allowed. Your Honor has refuted that in a couple of
4 decisions.

5 If Your Honor has any question, I'm happy to --

6 THE COURT: No, I don't.

7 MR. ROSENBAUM: -- address it.

8 THE COURT: Go ahead, Mr. Gay.

9 MR. GAY: Yes. I'm confused to the origination. The
10 note was purchased by GMAC. It was purchased by Homecoming
11 Financial, which an affiliate with GMAC. So the origination of
12 the loan from the start, in my opinion, it will be made to
13 Homecoming Financial and GMAC.

14 THE COURT: Well, am I correct, Mr. --

15 MR. GAY: And --

16 THE COURT: Mr. Gay? Mr. Gay, am I correct that Trust
17 One Mortgage Corporation originated the loan to you on May 17,
18 2006? Do you agree with that?

19 MR. GAY: Yes, sir, I do. That's correct.

20 THE COURT: And then, Residential Funding Company, LLC
21 purchased the loan from Trust One and transferred its interest
22 to E*Trade on May 20th, 2006. Do you agree with that?

23 MR. GAY: Yes, sir, I do.

24 THE COURT: And Homecoming serviced the loan from June
25 9th, 2006 to July 1, 2009, at which time servicing was

RESIDENTIAL CAPITAL, LLC, et al.

64

1 transferred to GMAC. Do you agree?

2 MR. GAY: Yes.

3 THE COURT: And then, GMAC transferred servicing to
4 Ocwen on February 16th, 2013 as part of the transaction during
5 the bankruptcy case. Agreed?

6 MR. GAY: Yeah, I agree.

7 THE COURT: So what -- in reading your claim, you're
8 complaining about -- you assert that you were "forced into
9 obtaining this high interest rate" home loan -- "home equity
10 loan in 2006".

11 MR. GAY: Yes.

12 THE COURT: But none of the debtors -- they didn't
13 originate the loan. So how -- why do you --

14 MR. GAY: This was, I think --

15 THE COURT: -- think you have a claim agai -- they
16 acquired the loan and transferred it. But they didn't
17 originate it. Your claim seems to relate to the origination.
18 You're complaining that "The lender was fully aware of my
19 inability to afford and repay this loan at such outrageous,
20 extortionate interest rate of eleven percent, which was only
21 designed to hinder my ability of ever repaying such loan."

22 So, what, the loan had an eleven-percent interest
23 rate?

24 MR. GAY: Yes. Your Honor, my question to you is,
25 when the note is purchased, isn't all its servicing -- all the

RESIDENTIAL CAPITAL, LLC, et al.

65

1 servicing rights are purchased with it, all the rights of the
2 loan, all the servicing when it's purchased, when it's sold,
3 good or bad?

4 THE COURT: If you have a claim against --

5 MR. GAY: If there's a --

6 THE COURT: If you -- at this point, I don't think you
7 have a claim anymore, if you ever had one. If you had a claim
8 in connection with the origination, it would have been against
9 Trust One Mortgage Corporation.

10 MR. GAY: Yes, my mortgage was -- they sold it
11 immediately; they sold it immediately to the Residential
12 mortgage, Homecoming Financial, and then to Ocwen -- no, to
13 GMAC then to Ocwen.

14 THE COURT: All right. I understand your argument.
15 Anything else you want to add?

16 MR. GAY: When the note is purchased, Your Honor,
17 isn't all the servicing rights -- isn't all the servicing
18 rights are purchased by whoever owned the note?

19 THE COURT: Servicing is separate from ownership of
20 the note, but -- any other argument you want to make?

21 MR. GAY: I'm just confused, you know, with the
22 origination and the servicing --

23 THE COURT: All right.

24 MR. GAY: -- that's -- my point is I'm confused. It
25 was purchased by GMAC.

RESIDENTIAL CAPITAL, LLC, et al.

66

1 THE COURT: It wasn't --

2 MR. GAY: And therefore, they come for your loan.

3 THE COURT: -- purchased by --

4 MR. GAY: I was making payments to Homecoming
5 Financial and GMAC.

6 THE COURT: Yeah, that's because they were servicing
7 the loan at various times. They didn't own it.

8 All right. I'm going to take the matter under
9 submission.

10 All right. I'm going to issue a written order or
11 ruling, Mr. Gay.

12 MR. GAY: Yes.

13 THE COURT: All right. Thank you very much.

14 All right.

15 MR. GAY: Thank you.

16 THE COURT: Let's do Rigel next.

17 MR. ROSENBAUM: Yes, Your Honor.

18 THE COURT: Mr. Rigel, you're there?

19 MR. RIGEL: I am, sir.

20 THE COURT: Okay. We'll let Mr. Rosenbaum argue
21 first, and then I'll give you a chance to argue. This relates
22 to claims number 1142.

23 MR. ROSENBAUM: Your Honor, the asserted basis for
24 this claim is mortgage notes. The claim attaches miscellaneous
25 documents that we referenced in our pleadings. Frankly, Your

RESIDENTIAL CAPITAL, LLC, et al.

67

1 Honor, we don't see any basis for this loan -- I think the --
2 for the claim, excuse me. I mean, the applicable facts here is
3 the loan was referred to foreclosure in May of 2012. It was at
4 that time owing for the March 1, 2012 payment. A foreclosure
5 complaint was filed on January 3rd.

6 On January 7th, the debtors approved -- January 7th,
7 2013, the debtors approved Mr. Rigel for a trial HAMP
8 modification plan, and the foreclosure was placed on hold at
9 that time. Servicing was transferred to Ocwen, but we
10 understand that Mr. Rigel completed the trial plan and was
11 approved for a permanent HAMP modification on April 25th, 2013.
12 And it's our understanding that the foreclosure file was closed
13 at that time.

14 Mr. Rigel has not provided any documentation in
15 support of his claim.

16 THE COURT: All right. Mr. Rigel?

17 MR. RIGEL: Yes, sir.

18 THE COURT: Tell me -- I'd like to know what your
19 argument in support of your claim is.

20 MR. RIGEL: Well, getting back -- let me first start
21 off by saying in regards to what the last gentleman, I believe
22 I understand where he's coming from as far as that is
23 concerned. These gentlemen here allege that they had no
24 responsibility as far as the originating loan. However, my
25 originating fee has Financial/GMAC directly on that paperwork.

RESIDENTIAL CAPITAL, LLC, et al.

68

1 THE COURT: Yes. I think --

2 MR. RIGEL: I would think --

3 THE COURT: -- I don't think they dispute this. The
4 Homecomings Financial LLC originated a loan on October 9th,
5 2007 in the amount of 165,000 dollars. Do you agree with that,
6 Mr. Rosenbaum?

7 MR. ROSENBAUM: Yes, Your Honor.

8 THE COURT: Okay. So that much -- and then GMAC Bank,
9 which is not one of the debtors here, it purchased the loan
10 from Homecomings and then it transferred the interest --

11 MR. RIGEL: Okay. If you'll let me finish.

12 THE COURT: -- to GMAC Mortgage and GMAC Mortgage --

13 MR. RIGEL: That was just -- that was --

14 THE COURT: -- transferred its interest to Freddie Mac
15 on November 20th, 2007 but none of that gives rise to a claim.
16 So that's what I mean --

17 MR. RIGEL: And I beg your pardon, sir, if you'd let
18 me finish without interrupting, I'd appreciate it.

19 THE COURT: Go ahead.

20 MR. RIGEL: Thank you. It does say there on the
21 origina -- that was just the point I just wanted to point out.
22 However, Your Honor, with my case here it's just been
23 so -- it's just like these folks are playing the shell game or
24 something. Hell, I don't even understand it anymore.

25 The bottom line is simply on -- in October of 2007 I

RESIDENTIAL CAPITAL, LLC, et al.

69

1 purchased this property with an appraisal of -- that this
2 property was worth 165,000 dollars at the time of -- that I
3 bought it. As we all know, then, around 2012 that's when the
4 bubble broke and things started falling apart and this is
5 where, you know, they came and they've proven that there was a
6 lot of wrongdoings. And as a result of that, it turns out my
7 property was only worth 112,000 dollars when I bought this --
8 when I bought it but I was charged 165,000. They knew that.

9 Now --

10 THE COURT: Who did you buy the prop --

11 MR. RIGEL: -- with all that being said --

12 THE COURT: Mr. Rigel, who'd you buy the property
13 from?

14 MR. RIGEL: With all that being said --

15 THE COURT: Mr. Rigel, who did you buy the property
16 from?

17 MR. RIGEL: I'm sorry.

18 THE COURT: Who did you buy the property from?

19 MR. RIGEL: Who did I buy the property from?

20 THE COURT: Yes, sir. Who did you buy the property
21 from?

22 MR. RIGEL: Home Financial/GMAC.

23 THE COURT: Mr. Rosenbaum?

24 MR. RIGEL: Okay. Now, with that said, now --

25 THE COURT: Did one of the debtors sell him the

RESIDENTIAL CAPITAL, LLC, et al.

70

1 property?

2 MR. RIGEL: -- so what happened, I didn't know
3 that -- would you --

4 THE COURT: Mr. Rigel, stop.

5 MR. RIGEL: What?

6 THE COURT: You'll do it the way I want to do it so
7 just be quiet until I tell you to speak.

8 MR. RIGEL: Oh, I'm sorry; is this the judge?

9 THE COURT: Yes, it is.

10 MR. RIGEL: Oh, I'm sorry; I thought you were the
11 lawyer and was, like, good Lord. Go ahead, sir.

12 THE COURT: Mr. Rosenbaum, did the debtors sell -- did
13 one of the debtors sell him the property?

14 MR. ROSENBAUM: Your Honor, we have no knowledge of
15 that. That's not our understanding. As we state in our
16 pleadings and supported by Ms. Priore's declaration, it was a
17 loan originated by Homecomings.

18 THE COURT: Okay. Go ahead, Mr. Rigel.

19 MR. RIGEL: Okay. I'm sorry, sir.

20 And -- so when the housing bubble broke, it came out
21 on the news that, you know, we could get relief because we were
22 now under water. In my case it's around 50,000 dollars because
23 of, you know, I was under water. I did not go into foreclosure
24 until these folks put me into foreclosure. In other words, I
25 was making all my payments and when I found that -- through the

RESIDENTIAL CAPITAL, LLC, et al.

71

1 TV and through the news media and everything else that we could
2 get relief through what they called at the time a HAMP program,
3 I called and originated for a HAMP program at which time they
4 told me that four things, basically, would happen under this
5 program and that would be -- I'd be relieved of the approximate
6 50,000 dollars that I was under water, they would lower my
7 monthly amount, they would forgive for five months of
8 nonpayment and they would lower my points. So I went ahead and
9 I opted to do the HAMP -- HAMP program.

10 Now, after I did all this, and they also told me, and
11 that's the reason I went into foreclosure was just at that time
12 they told me when you started this don't bother making your
13 payments because when you're under this program here you don't
14 have to worry about making these programs (sic) which is how I
15 started -- which is how I got into the foreclosure mess because
16 I missed payments because they told me, look, while this
17 process is going on, you don't have to worry about making
18 payments. So I didn't make the payments. And then they were
19 in the foreclosure thing.

20 Now, once all this was resolved, about six months
21 later, they give me this trial HAMP; I abided by it and
22 everything like that, and the end result of the HAMP was
23 absolutely nothing. My payments remained the same, 1,400
24 dollars a month; I was not given a relief for any of the monies
25 that I was under water for; they did not lower my monthly

RESIDENTIAL CAPITAL, LLC, et al.

72

1 amount, it did remain the same; they did not forgive the five
2 months of nonpayment; they didn't lower my points -- I'm sorry;
3 that's the one thing they did do. The only thing that they did
4 under this HAMP program was lower it from 6.25 to a 5.25 of
5 which I'm still owing and they renewed it to where I now, after
6 seven years of paying, I still now, under this program, they
7 just -- I still have a 30-year mortgage. So anything and
8 everything that I'm -- that I paid prior to this program was,
9 basically, null and void.

10 THE COURT: Anything else?

11 MR. RIGEL: So and from there, I just -- you know, I
12 just dealt with it and been making monthly payments ever since.

13 THE COURT: All right. Mr. Rosenbaum, anything you
14 want to add?

15 MR. ROSENBAUM: I don't have anything to add other
16 than what's in our papers and supported by our declaration that
17 he was -- Mr. Rigel was approved for the -- went into the trial
18 HAMP modification in January and the subsequent trial mod and
19 approval was through the subsequent servicer, Ocwen, so we
20 can't really --

21 THE COURT: Okay.

22 MR. ROSENBAUM: -- address his issues with his
23 modification.

24 THE COURT: All right. I'm going to take it under
25 submission.

RESIDENTIAL CAPITAL, LLC, et al.

73

1 Thank you, Mr. Rigel. I'll issue an order in due
2 course.

3 MR. RIGEL: Thank you.

4 MR. ROSENBAUM: Your Honor, the only -- the remaining
5 claim that we're addressing today on the eighty-second omnibus
6 is the Boyd claim, Your Honor, and --

7 THE COURT: Yes.

8 MR. ROSENBAUM: -- I don't know if Your Honor has any
9 questions.

10 THE COURT: Give me a second.

11 So what's the status of the petition for certiorari?
12 Ninth Circuit ruled against Mr. Boyd. There's a petition for
13 writ of certiorari.

14 MR. ROSENBAUM: He filed his petition of writ of
15 certiorari.

16 THE COURT: I'm sorry?

17 MR. ROSENBAUM: He did file it. Yes, Your Honor.

18 THE COURT: Yes.

19 MR. ROSENBAUM: My understanding was timely.

20 THE COURT: And it's still pending.

21 MR. ROSENBAUM: It's pending.

22 THE COURT: Okay. And it's Cal -- and we're dealing
23 with California State law claims.

24 MR. ROSENBAUM: Yes, Your Honor.

25 THE COURT: And my understanding is that the

RESIDENTIAL CAPITAL, LLC, et al.

74

1 California rule -- so you agree that for res judicata purposes,
2 the state law claim, the law of the state where the claim arose
3 applies?

4 MR. ROSENBAUM: Yes, Your Honor.

5 THE COURT: So that's California law.

6 MR. ROSENBAUM: Yes, Your Honor.

7 THE COURT: And my understanding of California law is
8 that it's not a final judgment as long as there's a cert
9 petition pending. You disagree?

10 MR. ROSENBAUM: Well, Your Honor, we didn't cite cases
11 specifically to res judicata, but we've cited cases in
12 California law and generally that petition for cert does not
13 affect the --

14 THE COURT: Federal. You have any cases that deal
15 with a petition for certiorari?

16 MR. ROSENBAUM: I'm sorry, Your Honor, give me a
17 minute.

18 THE COURT: The federal rule is that the petition for
19 certiorari -- it's final without regard to what happens on a
20 petition for certiorari but my understanding of the state law
21 in California is it's not final.

22 MR. ROSENBAUM: Your Honor, we cited one case in our
23 papers; Sacramento -- excuse me -- Sacramento County Department
24 of Social Welfare v. Javier, In re Christy (sic) 187 Cal. App.
25 3d 753. It's a 1986 decision. And I quote, "It is" -- from

RESIDENTIAL CAPITAL, LLC, et al.

75

1 the decision, "It is immaterial that appellants have filed a
2 petition for writ of certiorari with the United States Supreme
3 Court" --

4 THE COURT: I'll go back and look at it. I'm going to
5 take it under submission.

6 MR. ROSENBAUM: Thank you, Your Honor.

7 THE COURT: I'll go back and look at it again.

8 MR. ROSENBAUM: Your Honor, I think there's one
9 remaining matter.

10 THE COURT: Well, I see Mr. Bustos got here late.

11 MR. BUSTOS: Well, I apologize for being --

12 THE COURT: Well, just sit down. Go ahead, let's deal
13 with the other -- we've got the Liquidating Trust motion to
14 dismiss.

15 MR. WISHNEW: There's the -- right, that's the Heyward
16 adversary proceeding, Your Honor.

17 THE COURT: Right.

18 MR. WISHNEW: But before we get there, there's one
19 other matter for Mr. Philpot.

20 THE COURT: Okay. Yes.

21 MR. BUSTOS: Oh, I'm sorry.

22 THE COURT: All right. Is Mr. Philpot on the phone?

23 MR. WISHNEW: He's actually in the courtroom, Your
24 Honor.

25 THE COURT: Oh. Come on up, Mr. Philpot. You've been

RESIDENTIAL CAPITAL, LLC, et al.

76

1 sitting there nice and patiently. I, obviously, didn't
2 recognize you. So why don't you have a seat and then Mr.
3 Wishnew will go first and then you'll have a chance to respond.
4 Okay?

5 MR. WISHNEW: Thank you, Your Honor. Jordan Wishnew,
6 Morrison & Forester for the ResCap Borrower Claims Trust. We
7 are moving forward with V, item 1, the objection of the ResCap
8 Borrower Claims Trust to claim number 5067 filed by Gwendell L.
9 Philpot, filed at docket number 7760.

10 Mr. Philpot filed his response at docket number 8302
11 and the Borrower Trust filed its reply in further support of
12 the objection at 5067.

13 In regards to this, there was declaration of Kathy
14 Priore submitted in support. Ms. Priore's on the phone today.

15 Your Honor, what -- Mr. Philpot has filed a claim
16 for a general unsecured claim of 630,000 dollars against, I
17 believe, GMAC Mortgage. And that damage -- those damages are
18 made up of two elements: 280,000 dollars for hypothetical lost
19 profits over a three-and-a-half-year period as well as 350,000
20 dollars of compensatory damages.

21 It is the Borrowers Trust's position that the claim is
22 not valid and does not state a valid basis for liability, in
23 the first instance because this claim arose prior to Mr.
24 Philpot's Chapter 7 bankruptcy in Alabama was not included in
25 his schedules and, therefore, he is judicially estopped from

RESIDENTIAL CAPITAL, LLC, et al.

77

1 bringing the claim now against the debtors when it should have
2 been identified as part of his bankruptcy estate -- as part of
3 the 2009 bankruptcy filing.

4 The second basis is regards to whether the claim even
5 has any merit. And it's our position that, essentially, this
6 claim amounts to a, I guess, a series of consequential events
7 that followed a purported system error in terms of processing a
8 payment on or about September 30th, 2008.

9 In his submissions to the Court, Mr. Philpot,
10 essentially, acknowledges that he didn't try and make up the
11 payment even though the debtors gave him that option.

12 THE COURT: His position, as I understand it, is that
13 a lawyer advised him he didn't have to make any payments until
14 the issue got resolved of that one payment in 2008.

15 MR. WISHNEW: I absolutely agree, Your Honor, and just
16 to clarify, that lawyer was his lawyer. It was not --

17 THE COURT: Yes, I understand.

18 MR. WISHNEW: Okay.

19 THE COURT: His lawyer.

20 MR. WISHNEW: It was his lawyer. So it was not that
21 there was any representation from GMAC Mortgage --

22 THE COURT: Right.

23 MR. WISHNEW: -- that oh, don't make the payments
24 until we figure this out. This is advice he got from his own
25 counsel --

RESIDENTIAL CAPITAL, LLC, et al.

78

1 THE COURT: He says.

2 MR. WISHNEW: -- in terms of resolving this. The fact
3 of the matter is is that there were multiple ways Mr. Philpot
4 could have made up the payments. He could have sent in a
5 MoneyGram, he could have sent in a Western Union payment, he
6 could have sent in a certified check, a cashier's check, a
7 personal check. The fact of the --

8 THE COURT: Am I correct that the debtor agreed --
9 when the dispute arose about whether the September payment was
10 made in order to be processed properly, at some point the
11 debtor agreed that it would accept the late payment and forego
12 any late fees.

13 MR. WISHNEW: That's correct, Your Honor. And we
14 reflect that it was paid within sixty days. According to Mr.
15 Philpot and the advice he got from his counsel, that wasn't
16 good enough.

17 THE COURT: I'm not -- we'll put aside what -- but the
18 debtor -- it seems to be undisputed the debtor advised him that
19 to resolve the dispute about whether the payment was correctly
20 processed or not, the debtor would accept a late payment and
21 waive any late fee.

22 MR. WISHNEW: That's correct, Your Honor.

23 So in essence, Your Honor, the Borrowers Trust's
24 position is that this claim and the purported damages
25 identified therein are really a result from Mr. Philpot's own

RESIDENTIAL CAPITAL, LLC, et al.

79

1 actions and not by anything that GMAC Mortgage did back in
2 September 2008. And so from that regards, we believe their
3 claim lacks merit and should be expunged.

4 THE COURT: Okay. Mr. Philpot, let me hear from you.

5 MR. PHILPOT: My name is Gwendell Lloyd Philpot and
6 this morning I filed a response against document 8360 and I ask
7 that the response be added to this proceeding.

8 THE COURT: Mr. Philpot, it's an untimely response.
9 The time for all submissions has come and gone but just -- I'll
10 listen to your argument but I'm not going to go back and read
11 your additional submission.

12 MR. PHILPOT: Your Honor, may we adjourn this --

13 THE COURT: No, we can't.

14 MR. PHILPOT: -- until some --

15 THE COURT: No.

16 MR. PHILPOT: -- other time?

17 THE COURT: When you come up here -- you live in
18 Alabama?

19 MR. PHILPOT: I came up, yes. I tried to get here
20 yesterday but right after I got here, my health, I could not
21 make it to here to --

22 THE COURT: Okay. All right. But go ahead; I want to
23 hear your argument.

24 MR. PHILPOT: Okay. First of all, I ask the Court's
25 indulgence to -- because of my health and I have eyesight and

RESIDENTIAL CAPITAL, LLC, et al.

80

1 hearing and speech, I did not use the telephone system because
2 I knew that I would not be able to understand the proceedings
3 that were going on. I -- so that is why I came today.

4 The attorneys, Morrison & Foerster, have been diligent
5 in their administration in matters with me and I have no issue
6 against their process and -- but I do disagree with their
7 findings in the writings that they have provided and in the
8 response that I filed this morning that is illuminated except
9 for one error that I made but I'm assuming that I would correct
10 that error after this proceeding.

11 THE COURT: You can do it right now on the record.

12 MR. PHILPOT: Okay. There's an assertion by the
13 author of -- with attorney Morrison & Foerster that the sixty-
14 day allowance that the debtors gave was acceptable for me to
15 make my record correct, and the problem with that is that
16 within sixty days is not the same as prior to sixty days.

17 The issue was I had to make my payment prior to
18 October the 1st, 2008 in order not to be sixty days late. And
19 in fact, I did execute my payment by the servicer's pay-by-
20 phone processing system on the night of September the 30th,
21 2008 within that specific time.

22 The debtors have asserted that they would have made
23 the provisions that -- and e-mails confirmed such to me that I
24 could make the payments within and they would have administered
25 it as though it were within sixty days, but that was totally

RESIDENTIAL CAPITAL, LLC, et al.

81

1 against what actually happened.

2 I made the payment -- I executed the payment to be
3 made in their system prior to the sixty days which would go on
4 the record of being not sixty days late. That's a significant
5 issue.

6 THE COURT: When's the last time you made a payment,
7 Mr. Philpot?

8 MR. PHILPOT: That -- I executed that payment on
9 September the 30th, 2008 --

10 THE COURT: And --

11 MR. PHILPOT: -- and the last payment that they
12 recorded that I made was last day of August 2008.

13 THE COURT: Have you made any payments --

14 MR. PHILPOT: I have not.

15 THE COURT: Stop. Have you made any payments since
16 September 30th, 2008?

17 MR. PHILPOT: No, I did not. And my position here is
18 not based on the resulting situation that happened in regard to
19 my home being foreclosed or losing that home because of
20 subsequent failure to make payment. My position is strictly
21 what transpired against me because I could not have the payment
22 that I executed on September the 30th, 2008 actually recognized
23 and received as such because I had ongoing negotiations with
24 Jack Wright of Redstone Federal Credit Union and the Small
25 Business Administration agent for a loan having gone back over

RESIDENTIAL CAPITAL, LLC, et al.

82

1 my credit history and the process by which I was trying to
2 start -- continue -- not start, continue the development of an
3 Alzheimer's caregiving system. I needed capital working funds
4 in order to continue the development of that system to be
5 introduced at the June Apple Developers Conference in 2009.

6 My document that I filed this morning have an error in
7 page 3, paragraph 3, in the second line where I use the term
8 "within" and it was my error but that specific word I meant to
9 be "before" and should have been "before" and I did correct
10 that now. But the -- I have a true credit report of -- in
11 January the 28th, 2008 which I have and could be submitted to
12 the Court that shows my pattern of payment not only to the note
13 for this mortgage to Homecomings as being consistently thirty
14 days late and not sixty days late.

15 THE COURT: May I ask you this? The debtor asserts in
16 the papers they filed that you spoke to GMAC on October 9th,
17 2008 -- are you able to hear me okay?

18 MR. PHILPOT: Yes, sir.

19 THE COURT: Because I actually have a hearing
20 assist --

21 MR. PHILPOT: I don't need the hearing assist.

22 THE COURT: We have a hearing assist if you need it.

23 MR. PHILPOT: I don't need that; I just -- I can hear
24 from this.

25 THE COURT: Okay. That's fine.

RESIDENTIAL CAPITAL, LLC, et al.

83

1 That you spoke -- did you speak with someone on
2 October 9th, 2008?

3 MR. PHILPOT: Your Honor, I would have to look at my
4 records --

5 THE COURT: Can you --

6 MR. PHILPOT: -- to determine but I can say that
7 immediately on October the 1st, 2008, I e-mailed the servicing
8 organization. As a matter of fact, I am an industrial designer
9 and an ergonomics engineer, quite some record having designed
10 computer systems and I recognized on the night -- at midnight
11 when their computer system failed that there was an issue that
12 I needed to address immediately because I understood that --
13 that there was a possibility that their computer system did not
14 accurately provide and complete the transaction. And that
15 happened at midnight.

16 THE COURT: Well, here's what I want to focus on, Mr.
17 Philpot. They've indicated that they spoke to you on October
18 9th, 2008, that you again requested that your payment be
19 backdated -- just don't interrupt me -- September 30th, 2008,
20 but that they told you that while the payment couldn't be
21 backdated that if you made the payment within a few days, the
22 debtors would amend your credit report to reflect that the
23 payment was received within sixty days due to a voice
24 recognition unit error. Were you told that? This is the
25 point --

RESIDENTIAL CAPITAL, LLC, et al.

84

1 MR. PHILPOT: To claim -- that -- to claim --

2 THE COURT: -- that's hanging me up. Let me explain.

3 MR. PHILPOT: I understand.

4 THE COURT: Because their position is okay, here was
5 this issue about whether you made the payment on September
6 30th, or you didn't, but they told you on October 9th, if you
7 make the payment within a few days, the credit report will be
8 amended to reflect that you made the payment but you didn't
9 make the payment and you still haven't made a payment.

10 MR. PHILPOT: Your Honor, I never used the term
11 "backdated." That's a term that the attorneys have used and
12 was not my term and I never had any conversation about that
13 process. What I asked was that the payment be actually
14 credited to September the 30th when the error occurred and that
15 my credit report not show within sixty days but prior to sixty
16 days because --

17 THE COURT: You think you can go from 2008 until today
18 without making a single payment and come in here --

19 MR. PHILPOT: I --

20 THE COURT: -- and argue when they told you get your
21 payment in in a few days and we'll correct the credit report?

22 MR. PHILPOT: I do not have --

23 THE COURT: I'm not that naive.

24 MR. PHILPOT: I do not have that house.

25 THE COURT: When did you lose the house?

RESIDENTIAL CAPITAL, LLC, et al.

85

1 MR. PHILPOT: In 2013. We didn't --

2 THE COURT: So you went from 2008 to 2013 and you
3 didn't make a single payment and they told you if you get your
4 payment in in a few days they'll correct the credit report;
5 give me a break, Mr. Philpot.

6 MR. PHILPOT: Your Honor, if I could go through the
7 correct history of this, your -- I understand your perception
8 about the issues, but the surface is not -- doesn't provide the
9 truth. The truth is that in 2007, and if I could enter my
10 credit report it would show that I was diligent in making not
11 only the payments for this but other payments. And prior to
12 2012, we had a storm --

13 THE COURT: So do you think that the failure to have
14 this payment recorded on September 30th, 2008 excused you from
15 making any further payments and you're surprised that you lost
16 the home in 2013?

17 MR. PHILPOT: I'm never surprised that I lost the
18 home. And the issue about losing the home is not what I am
19 here for. The issue about what I'm here for is that in my
20 discussions with Jack Wright and my previous situation with
21 my -- all of the records of my payment starting in 2007,
22 agreeing with the servicing -- debtors that I would be thirty
23 days late and that they would not foreclose to give me time to
24 get things corrected.

25 We had storms in Alabama, tornados and storms that

RESIDENTIAL CAPITAL, LLC, et al.

86

1 seriously damaged this house. I filed with the Nationwide
2 Insurance Company and that -- their processing of claims did
3 not allow it to go forth in a timely manner and I used my funds
4 to repair a great deal of the house to make sure it was
5 properly cared for.

6 This was the home place of Federal Judge -- late
7 Federal Judge Seybourn H. Lynne. It's an important historic
8 facility and my wife and I had been diligent in trying to care
9 for this home, make sure that it was handled properly. And if
10 one may say, I've seen homes and experienced where people have
11 trashed places and torn them up; counter to that, we've
12 preserved this home.

13 During this time before 2013, I personally sanded and
14 refinished -- after the 2008, prior to 2013 -- I've sanded and
15 refinished the hardwood floors in the home myself. I worked
16 many, many hours of my own labor. I also diligently worked
17 with Nationwide Insurance and the contractor to make sure there
18 was a new roof placed on the house, that the house was put in
19 good marketable -- excellent marketable condition prior to the
20 time of 2013.

21 I believe my integrity, if one would look at the total
22 history and the integrity of my wife and myself to be good
23 responsible citizens and to be responsible with this particular
24 property and those who had extended us a note and a mortgage to
25 make sure that it was handled properly. But in 2007 after the

RESIDENTIAL CAPITAL, LLC, et al.

87

1 storm, I had an agreement with the servicing company to be
2 thirty days late because of some situations that happened with
3 my health as well as the storms and the funds that I used for
4 that.

5 THE COURT: Let me ask you this --

6 MR. PHILPOT: And the record would show that I -- I
7 made those payments and that when I had the conversation with
8 the Small Business Administration agents and several meetings
9 and with Jack Wright, the officer with Redstone Federal Credit
10 Union who also had a lien on the property that my Alzheimer's
11 project was significant, but one important issue was the thirty
12 days late was okay but I could not have another single event in
13 my credit report of being sixty days late. And had they
14 recorded that payment within sixty days, it would still show on
15 my credit report of being sixty days late. And Jack Wright,
16 after this event, after September the 30th when I met with him,
17 he told me if you cannot get this corrected to show that it was
18 made on September the 30th, you can't get the SBA loan and
19 that's -- that is the whole -- whole issue that I'm --

20 THE COURT: You filed a Chapter 7 bankruptcy on
21 February 3rd, 2009.

22 MR. PHILPOT: I did.

23 THE COURT: And you didn't schedule any claim
24 against --

25 MR. PHILPOT: I had --

RESIDENTIAL CAPITAL, LLC, et al.

88

1 THE COURT: -- any of the debtors.

2 MR. PHILPOT: -- I did not understand that process. I
3 have to say, I saw an attorney. By that time, our finances
4 were practically wiped out. Everything that I had I had worked
5 on the house.

6 And by the way, all the funds since that date, since
7 2009, since our bankruptcy was discharged in 2009 that have
8 come from Nationwide have gone directly to the contractors for
9 payment of materials and labor on that house. And so our -- my
10 knowledge have been by the attorney that I have who is now, for
11 health reasons, I'm not quite sure, he's not practicing, but
12 the clerk that worked for him, Tami Hinkle, is the one that I
13 had ninety percent of my conversations with in documenting
14 everything. I've tried to do the best that I knew how. And
15 she is incarcerated now for fraud in terms of legal matters for
16 that firm.

17 I have tried and been to them to try to find what I
18 could and talk with them. I can't; they're closed. I don't
19 know anything else I can do with that particular situation but
20 I can -- I do come before this Court and I do have information
21 about my background as a designer and ability to not enter into
22 a speculative arrangement but to actually provide a very
23 consecrated detailed process with business advisors reviewing
24 this during the fall of 2008 that showed that I had, as had
25 been typical with my past of tremendously successful business

RESIDENTIAL CAPITAL, LLC, et al.

89

1 adventures and design for my clients and employers --

2 THE COURT: All right. Let me stop you there.

3 MR. PHILPOT: -- a good process and --

4 THE COURT: I'll tell you what I'm going to do. You
5 have -- you indicate that you've submitted something else and
6 my courtroom deputy told me that something else was received
7 this morning and you have some additional documents that you
8 want to provide. Have you given Mr. Wishnew a copy of what you
9 have?

10 MR. WISHNEW: Yes, Your Honor.

11 THE COURT: Of the documents that he has with him now?

12 MR. WISHNEW: He provided me with his sur-reply this
13 morning if there's --

14 THE COURT: I mean, he has some additional documents.
15 Do you have something else?

16 MR. PHILPOT: I have things such as -- that I have not
17 entered in yet.

18 THE COURT: Okay.

19 MR. PHILPOT: I have two credit reports, I have --

20 THE COURT: All right. Here's what I'm going to do.
21 Leave that with Mr. Wishnew. Get it filed on ECF, Mr. Wishnew.

22 MR. WISHNEW: Yes, Your Honor.

23 THE COURT: Okay. I will read what was filed this
24 morning. It wasn't filed yet; that was why I hadn't seen it.
25 I know we received it. I will review it. I will review what

RESIDENTIAL CAPITAL, LLC, et al.

90

1 additional material you have. I'm taking the matter under
2 submission. I'll consider it all before I rule. Okay?

3 MR. PHILPOT: Yes, sir.

4 THE COURT: So leave it with Mr. Wishnew. He'll make
5 sure that it gets scanned and filed on the electronic case
6 filing system.

7 MR. WISHNEW: And then we'll overnight the package
8 back to Mr. Philpot.

9 THE COURT: And then you can send it back to him.

10 MR. WISHNEW: Yes.

11 THE COURT: Okay? All right, Mr. Philpot?

12 MR. PHILPOT: Certainly. And Your Honor, I appreciate
13 this Court's indulgence --

14 THE COURT: Okay.

15 MR. PHILPOT: -- with me and the attorneys and their
16 process in working to hopefully find the truth of this. And I
17 understand their position that there should be no wrongful
18 claims allowed under the Borrowers Trust.

19 THE COURT: You should -- I'm not ruling on it now but
20 this issue of claims that you may have had that arose before
21 your bankruptcy filing, this has come up many times already in
22 this case and it has to be -- they have to be scheduled in your
23 bankruptcy case. I'm not ruling now.

24 I will look at everything --

25 MR. PHILPOT: Right.

RESIDENTIAL CAPITAL, LLC, et al.

91

1 THE COURT: -- that we either received this morning.
2 It'll get filed and Mr. Wishnew will make sure that the
3 additional documents you want the Court to review, I will
4 review it before I rule. Okay.

5 MR. PHILPOT: Your Honor, I did address those specific
6 reports in that response --

7 THE COURT: Okay.

8 MR. PHILPOT: -- this morning.

9 THE COURT: I will read it all.

10 MR. PHILPOT: I will have to say that I have sought
11 attorneys. After the bankruptcy 2009, I did go with an
12 attorney firm Eyster & Key (sic) which was Glynn Tubb and Nick
13 Roth and we pursued the issue of MERS' failure in federal court
14 and all of those cases were completely thrown out in the class
15 action that was granted. Much of the problem that I did face
16 after the bankruptcy that -- and the only reason I have cited
17 those particular situations is to give some indication as to
18 how the servicing company treated me during that process with
19 callous indifference and a tremendous lack of communication
20 between their internal departments such that my attorneys with
21 Eyster & Key (sic) had much difficulty as well.

22 Finally, we were able to get all communications to be
23 channeled through the Alabama attorney Ceron & Gramoot (ph.)
24 between us with regards to this. So -- and after my bankruptcy
25 and after our financial collapse that I contin -- started on

RESIDENTIAL CAPITAL, LLC, et al.

92

1 September the 30th, 2008. We were never in a position
2 afterwards to do anything to recover such that we could have
3 taken the house.

4 But I do ask this Court to recognize that we were
5 diligent to make sure that this property was well cared for.
6 It is a contributing structure to the national record of
7 historic preservation for the Old Decatur-Bank Street Historic
8 District (sic). And it's the -- the house was the home place
9 of Honorable Seybourn H. Lynne, federal judge, which was a
10 wonderful individual and had such a tremendous record in the
11 State of Alabama especially in dealing with civil rights issues
12 in the '60s. And we just feel that our honor-bound duty is to
13 make sure that we were responsible to this and I believe that
14 we were and all of what we have done we have lost practically
15 everything --

16 THE COURT: All right. Mr. Philpot --

17 MR. PHILPOT: -- but God has blessed me --

18 THE COURT: -- I'm going to read everything but I
19 still have two other matters --

20 MR. PHILPOT: I'm sorry?

21 THE COURT: -- on this calendar that I've got to deal
22 with so we're going to move on.

23 Thank you very much for your appearance.

24 MR. PHILPOT: Thank you, sir. Good day.

25 THE COURT: And, Mr. Wishnew, you just arrange to get

RESIDENTIAL CAPITAL, LLC, et al.

93

1 those additional documents and you'll send them back to him and
2 get them filed. Okay?

3 MR. WISHNEW: Absolutely, Your Honor.

4 THE COURT: So is anyone here on Heyward v. GMAC
5 Mortgage? All right.

6 I have the Liquidating Trust motion to dismiss.
7 Pending before the Court is the ResCap Liquidating Trust motion
8 to dismiss plaintiff's adversary complaint. It's filed at ECF
9 number 15. It's case number 14-01778.

10 The Trust filed the declaration of Mr. Wishnew in
11 support of the motion. It's Exhibit 2 to the motion. No
12 opposition or objections were filed in the motion. The Court
13 grants the motion.

14 There's a history -- I won't go through it all. Mr.
15 Heyward twice sought to get a TRO against foreclosure of a
16 Connecticut property from this Court. The Court denied the
17 motion on both occasions when it arose.

18 Federal Rules of Civil Procedure 41(b) permits
19 dismissal for failure to prosecute. In addition, the Court
20 entered an additional procedures order in this case, an
21 adversary proceed -- supplemental adversary procedures that
22 were not followed by Mr. Heyward.

23 The record clearly establishes that Mr. Heyward has
24 failed to follow on the orders entered by this Court in
25 connection with the adversary proceeding, has not prosecuted

RESIDENTIAL CAPITAL, LLC, et al.

94

1 this action pursuant to Federal Rules of Civil Procedure 41(b),
2 and the Court dismisses the adversary proceeding for failure to
3 prosecute.

4 For avoidance of doubt, the dismissal by the Court
5 operates as an adjudication on the merits as is permitted by
6 Rule 41(b).

7 MR. WISHNEW: Thank you, Your Honor.

8 THE COURT: All right. Mr. Bustos came in very late.
9 The Court already ruled, Mr. Bustos, but come up.

10 MR. BUSTOS: Your Honor, I'd like to make a statement.

11 THE COURT: Let me -- before you begin, Mr. Bustos --
12 well, go ahead, Mr. Bustos, explain why you were so late today?

13 MR. BUSTOS: I was supposed to come in on a plane
14 today at 6:30. For reasons in Arizona that really don't
15 matter, I got onto another plane and got in today at 9:21 a.m.

16 As far as the actual case is concerned -- well, I
17 moved everything to Arizona. I don't practice bankruptcy law.
18 I just -- I can do certain --

19 THE COURT: Well, you didn't practice bankruptcy law
20 the last time you were here, either.

21 MR. BUSTOS: No, no, but I can do simple petitions.
22 But in terms of a complex case like this I think I went a
23 little over my head, to be quite honest. I talked to my client
24 about this. I asked him, I said maybe you'll be better served
25 with another attorney. He keeps on insisting that I stay on.

RESIDENTIAL CAPITAL, LLC, et al.

95

1 I will not stay on as --

2 THE COURT: Well, you're not going to get out unless I
3 let you out.

4 MR. BUSTOS: I understand but as an -- for an
5 evidentiary hearing I really don't believe I'm the person.

6 I did get a phone call from Mr. Wishnew. He said he
7 wanted to settle. If we could come to some sort of settle --

8 THE COURT: Well, I've already ruled. I'm going to
9 tell you what my ruling is.

10 MR. BUSTOS: Okay.

11 THE COURT: I'm going to give you a chance to address
12 it.

13 You're here on an order to show cause why the Court
14 should not impose sanctions pursuant to Federal Rule of
15 Bankruptcy Procedure 9011.

16 MR. BUSTOS: Yes.

17 THE COURT: The order to show cause, which was entered
18 on February 26th, 2014 incorporates by reference the memorandum
19 opinion and order sustaining in part and overruling in part the
20 ResCap Borrower Claims Trust objection to claims number 345 and
21 3743 filed by Conrad P. Burnett, Jr. That memorandum opinion
22 and order is dated February 26th, 2014. It's incorporated into
23 the order to show cause.

24 The order to show cause, among other things -- I'm not
25 going to review the entire matter -- but on page 3 notes that

RESIDENTIAL CAPITAL, LLC, et al.

96

1 my opinion had addressed each of the eleven affirmative
2 defenses that you asserted an opposition. In the memorandum --
3 and I'll read from this paragraph of the order to show cause; I
4 quoted it in the transcript earlier today in your absence, but
5 it says, "Whereas in its opinion, the Court addressed each of
6 the eleven affirmative defenses Bustos asserts in the
7 opposition and found that the affirmative defenses are
8 frivolous, untimely, unsubstantiated by the evidence in the
9 record before the Court, and/or unsupported by current or
10 applicable law, existing law, or by a nonfrivolous argument for
11 the extension, modification, or reversal of existing law or the
12 establishment of new laws," referring to the opinion at pages
13 16 through 20.

14 The order to show cause further goes on, "The Court
15 further found that Bustos' arguments in the opposition appear
16 to be entirely unsupported by the record and unsubstantiated by
17 any meaningful legal research."

18 Did you do any -- did you, sir, do any legal research
19 in connection with any of the eleven affirmative defenses that
20 you asserted in your opposition?

21 MR. BUSTOS: Very little. I did it the best I could
22 with the --

23 THE COURT: Well, did you do any -- tell me what
24 research you did? You had a -- let me ask you this. You filed
25 an affirmation of Pablo E. Bustos in support of dismissal of

RESIDENTIAL CAPITAL, LLC, et al.

97

1 sanctions motion.

2 MR. BUSTOS: Yes.

3 THE COURT: What you didn't do is, I required -- my
4 order to show cause said on page 4, "Bustos' response shall
5 address, as this Court has done in this order and in its
6 opinion, each of the eleven affirmative defenses asserted in
7 the opposition explaining why each asserted affirmative defense
8 does not constitute a violation of Bankruptcy Rule 9011." And
9 you didn't do that in your opposition. Do you agree?

10 MR. BUSTOS: No. I --

11 THE COURT: You don't agree or you agree?

12 MR. BUSTOS: No, I wouldn't say I addressed it. No,
13 I -- no, I --

14 THE COURT: Are you acknowledging that you did not
15 address in your opposition the merits of any of the eleven
16 affirmative defenses that you asserted?

17 MR. BUSTOS: I agree with that. Yes.

18 THE COURT: Okay. All right. In addition to your
19 affirmation, there's a letter from your client --

20 MR. BUSTOS: Of -- oh, yes.

21 THE COURT: -- Mr. Burnett, and there's also a
22 declaration of Dennis J. Huelbig, Jr. in support of dismissal
23 of an order to show cause as to Attorney Pablo E. Bustos. Did
24 Mr. Huelbig work for you?

25 MR. BUSTOS: No. I -- well, not now but I asked him

RESIDENTIAL CAPITAL, LLC, et al.

98

1 to call the Court to tell them that I couldn't come.

2 THE COURT: Was he your paralegal in New York?

3 MR. BUSTOS: He did paralegal work for me, yes. Like,
4 I --

5 THE COURT: You're not answering my question because
6 Mr. Burnett's letter says, "I retained New Research Services
7 out of Las Vegas, Nevada to create and process the claims and
8 necessary paperwork."

9 MR. BUSTOS: Um-hum.

10 THE COURT: "This firm is a paralegal firm that claims
11 to be familiar with federal bankruptcy procedure. New Research
12 Services is owned and operated by one person; Dennis Huelbig,
13 Jr."

14 MR. BUSTOS: That's true.

15 THE COURT: Is that correct?

16 MR. BUSTOS: That was way before me, though, before I
17 was retained. I was retained after that. He worked with
18 Huelbig for a long time and when he came to me and said
19 Huelbig -- we'd have to sign a whole new retainer and he has to
20 work directly with me. And if -- and if anything Huelbig did
21 it would be as -- it's in the printed contract -- I asked him
22 to call the Court --

23 THE COURT: Okay. So you're responsible for any legal
24 arguments that were made in the opposition to the claim
25 objection. Correct?

RESIDENTIAL CAPITAL, LLC, et al.

99

1 MR. BUSTOS: Yes.

2 THE COURT: All right. So why shouldn't -- let me
3 tell you, what in your absence, I ruled earlier --

4 MR. BUSTOS: Okay.

5 THE COURT: -- and I'm going to give you a chance to
6 address it.

7 I awarded sanctions in the amount of 1,000 dollars for
8 the each of the eleven affirmative defenses that have -- are
9 absolutely without merit. So that's 11,000 dollars. And in
10 addition to that, because you didn't appear today and I had
11 ordered you to -- and this part I will take back, you came in
12 late -- an additional 2,500 dollars for not appearing today.

13 MR. BUSTOS: Um-hum.

14 THE COURT: And then when it -- so that's 13,500. And
15 then when we came to the case management conference on the
16 adversary proceeding you filed for Mr. Heyward, you weren't
17 here for that, that was an additional, 2,500. So with respect
18 to the sanctions for not appearing, I'm retracting that earlier
19 ruling. So that's a total of 5,000 dollars; 2,500 for failing
20 to appear on the order to show cause and 2,500 for failing to
21 appear on the adversary proceeding case management conference.
22 Tell me -- explain to me why I shouldn't sanction you 1,000
23 dollars for each of the frivolous eleven affirmative defenses
24 you asserted? It required the Trust to address specifically
25 and it required the Court to address each in its opinion. I'm

RESIDENTIAL CAPITAL, LLC, et al.

100

1 giving you a chance to respond.

2 MR. BUSTOS: Your Honor, that would require me to
3 write, but -- in length; I can't just on a whim address all of
4 them. I could address the case in general.

5 THE COURT: No, no, no, no. The only claim -- look,
6 the opinion that I filed sustained in part and overruled in
7 part the Trust's objection to your client's claim. But the
8 interesting thing to me is the only part that survived was the
9 part that your client asserted without a lawyer; you didn't
10 address it all. Your client was doing just fine on that one.
11 Anything you added to it was frivolous, unsupported by law, and
12 that's what I'm asking you to address. Okay. Why shouldn't I
13 sanction you for the frivolous arguments not supported by any
14 research or arguments or good-faith arguments based on case
15 law? Why shouldn't I sanction you for that?

16 MR. BUSTOS: I can tell you what I believe, whether
17 you agree or not, is that in the last appearance when I
18 appeared in front of you, everything went to shambles. I
19 thought we were -- because I spoke to the attorney before that
20 the attorney for -- I thought we were going to settle and then
21 you kept on asking me these questions.

22 I believed that there was fraud, clearly, from GMAC;
23 that was clear that my client had a good claim, and I didn't
24 expect --

25 THE COURT: You think you can just throw stuff up

RESIDENTIAL CAPITAL, LLC, et al.

101

1 against the wall and hope something sticks with no legal
2 support whatsoever? Your client, his claim goes forward as to
3 one claim; that's explained in my opinion. The problem here is
4 that you asserted eleven affirmative defenses --

5 MR. BUSTOS: Um-hum.

6 THE COURT: -- without absolutely no support in fact
7 or in law or any argument for the good-faith extension of law
8 and that's the portion that's covered by my order to show cause
9 why you shouldn't be sanctioned.

10 MR. BUSTOS: Um-hum.

11 THE COURT: I'm going to give you one last chance to
12 address the -- why you think I shouldn't impose monetary
13 sanctions against you for making frivolous arguments.

14 MR. BUSTOS: Because the claim -- the case itself is
15 not frivolous. It's not. He has a good claim, Mr. Burnett.

16 THE COURT: Do you think -- you think he has a good
17 claim?

18 MR. BUSTOS: Yes. Yes, I do.

19 THE COURT: Okay. Do you think that entitles you to
20 make any argument whatsoever?

21 MR. BUSTOS: No. No. And -- look, I do agree with
22 you that I made mistakes. I believe it's excessive. I don't
23 really even have 11,000 dollars so I wouldn't -- I wouldn't
24 even be able to pay it even if I wanted to.

25 THE COURT: You should have thought of that before you

RESIDENTIAL CAPITAL, LLC, et al.

102

1 filed frivolous --

2 MR. BUSTOS: I -- look, Your Honor, I agree. I
3 could -- if you want to impose some sanctions on me, I would
4 think it's fair, but 11,000 dollars, that's just -- especially
5 for a case I don't even want to be on. I told -- and I talked
6 to Mr. Burnett about this and I've discussed it with him
7 thoroughly. He keeps on insisting me being on it. I want to
8 get off the case. I didn't want to fly in today for this.
9 I --

10 THE COURT: So here's what --

11 MR. BUSTOS: -- and I never said I was -- I never said
12 I was a bankruptcy attorney --

13 THE COURT: -- here's --

14 MR. BUSTOS: -- like, a specialist. I never said
15 that.

16 THE COURT: Well, you don't have to be a bankruptcy
17 specialist to know this: Rule 9011(b) provides a quote, "By
18 presenting to the Court, whether by signing, filing,
19 submitting, or later advocating a petition, pleading, written
20 motion, or other paper, an attorney or an unrepresented party
21 is certified that to the best of the person's knowledge,
22 information, and belief formed after an inquiry reasonable
23 under the circumstances" --

24 MR. BUSTOS: That I agree with that.

25 THE COURT: I'm not finished reading it.

RESIDENTIAL CAPITAL, LLC, et al.

103

1 Subsection (2) of it is, "the claims, defenses, and
2 other legal contentions therein are warranted by existing law
3 or by a nonfrivolous argument for the extension, modification,
4 or reversal of existing law or the establishment of new law."

5 MR. BUSTOS: Um-hum.

6 THE COURT: That's the portion I've addressed in the
7 order to show cause and in my original opinion --

8 MR. BUSTOS: Um-hum.

9 THE COURT: -- and what you have not addressed. The
10 one piece of your client's, Mr. Burnett's, claim that he
11 asserted pro se has survived, but that's not what you
12 addressed. That's not the problem I had with what you filed.

13 Whether you believe your client had a good claim or
14 not, it doesn't entitle you to file eleven totally frivolous
15 affirmative defenses. When I give you a chance to file an
16 explanation for why you shouldn't be sanctioned for it, you
17 don't even address it.

18 MR. BUSTOS: Your Honor, I didn't believe they were
19 frivolous. Whether I made a complete and total mistake, that's
20 another matter, but in fact, I should at least be allowed to
21 address those on the merits given some time.

22 THE COURT: Right now. That -- look, I gave you a
23 deadline for filing.

24 MR. BUSTOS: And --

25 THE COURT: You filed something. You didn't address

RESIDENTIAL CAPITAL, LLC, et al.

104

1 it there. I'm asking you right now, this is the time and
2 place; it's not being continued to another date or another
3 time. You have any case authority to support any of the eleven
4 affirmative defenses that you asserted?

5 MR. BUSTOS: Off the top of my head no, I cannot. I
6 cannot guarantee authority. I could say --

7 THE COURT: All right.

8 MR. BUSTOS: -- that I didn't believe they were
9 frivolous. I did the best I could --

10 THE COURT: All right.

11 MR. BUSTOS: -- on the time.

12 THE COURT: I'm taking the matter under submission.
13 So the one piece of it, so the record's clear, I am withdrawing
14 my earlier award of sanctions for nonappearance either on the
15 OSC or on the case management.

16 Mr. Bustos, you're counsel of record in an adversary
17 proceeding you filed in this court. I'm not going to deal with
18 the merits of it today. You better think long and hard before
19 you decide what you're going to do. I think debtors' counsel's
20 going to speak with you about it. If you decide to proceed
21 with the adversary proceeding and they decide to make a motion
22 for sanctions under Rule 9011, I'll consider it and rule on it
23 if they comply with the rule. I'm not going to address it
24 further today, but what remains on my docket is an adversary
25 proceeding that you signed and filed.

RESIDENTIAL CAPITAL, LLC, et al.

105

1 MR. BUSTOS: Can I withdraw it, Your Honor?

2 THE COURT: Talk to Mr. Wishnew after. I'm not going
3 to get into it beyond. Okay.

4 MR. BUSTOS: Okay. And as far as the sanctions, the
5 11,000, are those stayed? You said you were going to -- it's
6 pending.

7 THE COURT: No. I'm going to -- I'm going to enter a
8 written order. I'm going to think some more about what I'm
9 going to do. You should have thought long and hard before you
10 did what you did --

11 MR. BUSTOS: I mean --

12 THE COURT: -- and then not respond to the order to
13 show cause.

14 MR. BUSTOS: I did respond to it; I just didn't
15 respond in the exact way that the Court instructed.

16 THE COURT: Okay. All right. We're adjourned.

17 MR. WISHNEW: Thank you for your time, Your Honor.

18 THE COURT: I'm sorry?

19 MR. WISHNEW: Thank you for your time.

20 THE COURT: Thank you.

21 (Whereupon these proceedings were concluded at 12:32 PM)

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I N D E X

RULINGS

	PAGE	LINE
Pablo E. Bustos, Esq. ordered to pay 13,500	11	7
dollars in sanctions (retracted)		
Mr. Bustos ordered to pay 2,500 dollar	13	14
sanction for failure to appear in adversary		
proceeding pre-trial conference		
(retracted)		
ResCap Liquidating Trust's eighty-fourth	17	11
omnibus objection to claims sustained		
Debtors' objection to the claim of quiet	51	5
title of Mr. Satterwhite sustained		
Debtors' objection to claim of breach of	51	19
covenant of good faith and fair dealing by		
Mr. Satterwhite overruled		
Borrower Trust's seventy-second omnibus	61	22
Objection to fourteen uncontested claims		
sustained		
ResCap Liquidating Trust's motion to dismiss	93	13
Plaintiff Heyward's adversary complaint		
Granted		

1 Sanctions imposed on Attorney Bustos 104 13
2 for nonappearance withdrawn
3
4
5
6
7
8
9
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C E R T I F I C A T I O N

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I, Aliza Chodoff, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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ALIZA CHODOFF

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AAERT Certified Electronic Transcriber CET**D-634

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Date: April 1, 2015

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	41:17;45:9	61:4;73:5	27:15;36:19;56:13;	alleges (3)
#	acknowledged (3)	adequately (1)	60:19;65:4,8;73:12;	32:22;33:1;53:14
#607 (1)	44:21;52:4;53:12	9:11	76:16;77:1;79:6;	allow (4)
4:22	acknowledges (1)	adjourn (1)	80:6;81:1,21;87:24;	15:8;16:3,11;86:3
	77:10	79:12	93:15;101:1,13	allowance (1)
\$	acknowledging (1)	Adjourned (4)	agenda (7)	80:14
	97:14	3:14;15:9;61:25;	7:8;11:22;14:13,	allowed (5)
	acquired (1)	105:16	24;17:18;26:17;60:9	17:6,7;63:3;90:18;
\$28,369.95 (1)	64:16	adjudication (1)	agent (6)	103:20
20:21	acted (1)	94:5	32:3,5;34:10;52:2,	Allowing (3)
\$7,903.24 (2)	52:17	administered (1)	6;81:25	3:7,8;15:14
16:6;17:4	acting (2)	80:24	agents (1)	almost (1)
	56:14,23	administration (3)	87:8	23:10
[action (13)	80:5;81:25;87:8	ago (1)	always (1)
	29:25;30:4,5,7,20;	admitted (1)	7:16	47:24
[Re'-gal] (1)	31:2,13;38:14;51:10;	55:19	agree (24)	Alzheimer's (2)
61:7	53:6,7;91:15;94:1	advance (1)	32:2,6,8,17;34:10,	82:3;87:10
[Rih'-gel] (1)	actionable (5)	25:6	19,20;40:12;42:17;	ambiguous (1)
61:7	45:13,16,16;46:11,	adventures (1)	63:18,22;64:1,6;	45:6
	23	89:1	68:5;74:1,77:15;	amend (1)
A	actions (2)	Adversary (18)	97:9,11,11,17;	83:22
	39:23;79:1	4:3;11:24;12:6,20;	100:17;101:21;	amended (1)
abandon (1)	actual (14)	13:2,16,22;75:16;	102:2,24	84:8
39:11	37:20;38:9,13,14;	93:8,21,21,25;94:2;	agreeable (1)	American (1)
abided (1)	39:5,7,20;46:15;	99:16,21;104:16,21,	22:3	50:22
71:21	52:15,23;53:15;55:2;	24	agreed (8)	among (1)
ability (2)	57:15;94:16	advice (2)	10:7;22:9;32:17;	95:24
64:21;88:21	actually (17)	77:24;78:15	42:25;52:6;64:5;	amount (16)
able (12)	9:3;12:15;19:19,	advise (1)	78:8,11	11:8,11,13;13:14;
20:3;21:2;29:24;	20;20:18;29:13,22,	15:21	agreeing (1)	16:5;17:4,6,8;19:25;
37:4;43:14;46:18;	23;41:7;56:24;57:22;	advised (3)	85:22	28:4;36:17,19;68:5;
48:16;49:12;80:2;	75:23;81:1,22;82:19;	33:4;77:13;78:18	agreement (4)	71:7;72:1;99:7
82:17;91:22;101:24	84:13;88:22	advisors (1)	15:22;32:6;52:3;	amounted (1)
above (1)	add (7)	88:23	87:1	35:9
50:22	51:2;58:3,13;59:2;	advocating (1)	agreements (1)	amounts (2)
absence (2)	65:15;72:14,15	102:19	16:21	35:9;77:6
96:4;99:3	added (2)	affect (1)	ahead (24)	ample (1)
Absolutely (8)	79:7;100:11	74:13	15:2;18:1;19:18;	49:10
25:19;30:22;37:22;	addition (6)	affiliate (1)	20:20;23:5;27:12;	and/or (2)
71:23;77:15;93:3;	9:17,22;11:10;	63:11	34:12;35:3,22;40:7;	9:7;96:9
99:9;101:6	93:19;97:18;99:10	Affirmation (3)	47:4;52:22;55:13;	anticipate (1)
accept (2)	additional (13)	9:18;96:25;97:19	57:25;62:5,13;63:8;	37:17
78:11,20	11:11,19;13:13;	affirmative (21)	68:19;70:11,18;71:8;	anymore (2)
acceptable (1)	36:18;79:11;89:7,14;	8:7,9,13,23;9:2,5;	75:12;79:22;94:12	65:7;68:24
80:14	90:1;91:3;93:1,20;	11:1,8;44:8;96:1,6,7,	Alabama (5)	apart (1)
accepting (2)	99:12,17	19;97:6,7,16;99:8,23;	76:24;79:18;85:25;	69:4
16:3;21:3	Additionally (1)	101:4;103:15;104:4	91:23;92:11	apologize (2)
According (3)	56:19	affirmatively (2)	Aliza (1)	49:9;75:11
16:20;40:4;78:14	address (30)	43:7;53:5	4:20	App (1)
account (9)	8:6,12,13;11:1;	afford (1)	ALLARD (10)	74:24
18:19;20:3;21:4,9,	28:20;29:8;38:8;	64:19	14:17,18,23;15:1,3,	appear (15)
10,24,25;23:12;28:11	41:3;55:22,23;57:25;	afterwards (2)	7,18,23;16:1;17:12	7:17,25;8:15;11:5,
accounting (1)	63:7;72:22;83:12;	59:10;92:2	allegation (3)	12,20;13:10,15;
19:23	91:5;95:11;97:5,15;	agai (1)	13:7;33:5;62:17	58:18,20,20;96:15;
accounts (1)	99:6,24,25;100:3,4,	64:15	allegations (3)	99:10,20,21
19:21	10,12;101:12;103:17,	again (6)	56:13;60:24;62:19	appearance (3)
account's (1)	21,25;104:23	23:4;27:3;42:7;	allege (1)	61:14;92:23;
21:5	addressed (13)	46:22;75:7;83:18	67:23	100:17
accuracy (1)	8:21,22;12:4;	Against (37)	alleged (4)	appearances (1)
60:24	38:13;46:2;56:11;	3:4;7:11,22;8:5;	34:22;42:9;46:14;	61:14
accurately (1)	61:11;96:1,5;97:12;	11:11,14;13:14;16:4,	52:5	appeared (2)
83:14	103:6,9,12	5,16,17,18,18;17:3,4,	allegedly (2)	18:12;100:18
acknowledge (2)	addressing (2)	7,8;18:10;21:24,24;	16:11;43:5	appearing (3)

28:1;99:12,18 appears (4) 10:20;17:11;34:17; 53:9 appellants (1) 75:1 Apple (1) 82:5 applicable (3) 9:7;67:2;96:10 application (5) 35:2;44:18;46:21; 52:21;58:21 applied (1) 33:3 applies (2) 38:18;74:3 appraisal (1) 69:1 appreciate (7) 37:7;13;47:7; 50:24;58:5;68:18; 90:12 appropriately (1) 13:8 approval (1) 72:19 approved (7) 20:15,16,19;67:6,7, 11;72:17 approximate (1) 71:5 approximately (1) 19:2 April (24) 23:20;24:8;25:4, 16;28:12;32:20,21, 22,23;33:7,15,21,24; 34:3,24;35:1;40:3,3, 5;41:25;43:14;61:12, 25;67:11 argue (4) 40:9;66:20,21; 84:20 argues (1) 17:5 arguing (2) 18:4;56:12 argument (16) 9:8,15;30:19;34:5; 40:2;52:5;56:20; 65:14,20;67:19; 79:10,23;96:10; 101:7,20;103:3 arguments (7) 56:18;96:15;98:24; 100:13,14,14;101:13 Arizona (6) 7:16;12:9,15,15; 94:14,17 arose (5) 74:2;76:23;78:9; 90:20;93:17	around (2) 69:3;70:22 arrange (1) 92:25 arrangement (3) 20:9,14;88:22 arrangements (2) 16:15;20:20 arrears (1) 47:14 aside (2) 44:21;78:17 assert (3) 30:9;43:24;64:8 asserted (19) 8:8,23;11:2,9;18:8; 22:12;51:8;66:23; 80:22;96:2,20;97:6,7, 16;99:24;100:9; 101:4;103:11;104:4 assertion (1) 80:12 assertions (1) 52:19 asserts (3) 30:20;82:15;96:6 assigned (1) 62:21 assist (3) 82:20,21,22 assistance (1) 58:5 Associate (2) 6:16;27:22 ASSOCIATES (1) 6:2 association (1) 49:3 assume (2) 19:14;43:13 assuming (2) 52:18;80:9 attached (2) 27:23,25 attaches (1) 66:24 attack (1) 20:24 attempted (1) 9:11 attorney (27) 9:2,10,21;10:6,8, 10,21;14:9;20:2,21; 56:15,22;57:5,11; 59:14,17;80:13;88:3, 10;91:12,23;94:25; 97:23;100:19,20; 102:12,20 attorney-client (1) 22:12 Attorneys (6) 6:3;80:4;84:11; 90:15;91:11,20	attorneys' (1) 28:9 August (3) 10:5;20:17;81:12 author (1) 80:13 authority (12) 32:6;34:10,15; 38:21;45:22;52:2; 53:2;57:10,11,20; 104:3,6 available (10) 23:23;28:2;36:17, 18,19,22;37:1,23; 41:11;54:24 avoidance (1) 94:4 award (1) 104:14 awarded (1) 99:7 aware (3) 12:9,15;64:18 B back (17) 12:8,14;44:4; 48:20;50:4,10;55:19; 67:20;75:4,7;79:1, 10;81:25;90:8,9; 93:1;99:11 backdated (3) 83:19,21;84:11 backed (1) 16:13 background (1) 88:21 bad (2) 47:16;65:3 Bank (15) 15:12;21:15,18; 22:4,14,16,23;23:11, 23;33:2,48:5;56:15; 57:5;59:17;68:8 Bankruptcy (37) 2:16,25;3:3;7:11, 22:8;10:10;3:6,9,18; 11:4,6;48:24,25;50:6, 7,8,9,13;64:5;76:24; 77:2,3;87:20;88:7; 90:21,23;91:11,16, 24;94:17,19;95:15; 97:8;98:11;102:12, 16 bar (3) 49:2;58:19,23 based (4) 16:21;22:12;81:18; 100:14 bases (2) 28:13,18 basic (1)	30:8 basically (3) 52:4;71:4;72:9 basis (5) 15:17;66:23;67:1; 76:22;77:4 bear (2) 32:21;57:17 became (1) 47:13 beg (1) 68:17 begin (1) 94:11 Behalf (7) 3:9;12:2;32:1; 56:15,24;57:8;61:15 belief (1) 102:22 bench (1) 36:25 Beret (2) 47:22;50:21 best (9) 19:7;41:13,21,23; 53:12;88:14;96:21; 102:21;104:9 better (2) 94:24;104:18 beyond (1) 105:3 bidder (1) 48:6 big (1) 54:23 billable (1) 10:13 billed (1) 10:14 bit (1) 36:9 blacked (4) 19:21,25;24:21,21 bless (3) 58:4,25;60:6 blessed (1) 92:17 blind (2) 47:8,14 block (2) 48:8;57:3 bogus (1) 55:21 books (3) 17:2;60:23,25 borrow (1) 48:16 Borrower (31) 3:17,18,21;7:6; 8:19;12:13;17:16,19; 26:17;27:15,21; 39:24;41:9;42:24; 43:5;44:9,15;45:23,	24;53:4,6;60:13,14, 15,17,22;61:3;76:6,8, 11;95:20 borrowers (6) 36:20;37:25;63:1; 76:21;78:23;90:18 borrowers' (1) 36:18 both (4) 25:17;26:3;38:13; 93:17 bother (1) 71:12 bothers (1) 53:2 bottom (1) 68:25 bought (5) 48:5,6;69:3,7,8 Bovis (1) 38:21 Bowling (1) 2:17 Boyd (5) 61:5,15,17;73:6,12 breach (17) 28:22;31:3,16; 34:13,22;35:5,7; 37:18;38:3,4;46:23; 51:12,18,22;52:9,11; 57:14 breaches (1) 35:11 break (1) 85:5 briefing (1) 46:4 bring (5) 19:9;23:22;24:3,5; 25:17 bringing (2) 24:11;77:1 brings (2) 26:16;60:8 Broadway (1) 6:4 broke (2) 69:4;70:20 brought (2) 18:18;19:11 bubble (2) 69:4;70:20 burden (1) 57:17 Burnett (13) 6:3;8:21;9:1,23,24; 11:24;12:3;14:1,5; 95:21;97:21;101:15; 102:6 Burnett's (6) 8:22,24;9:10;11:3; 98:6;103:10 business (5)
--	---	--	---	---

41:22;81:25;87:8; 88:23,25 Bustos (84) 3:4;6:2,8;7:11,12, 14,15,15,23,24;8:4, 11,23;9:18,21,23; 10:11,13,17;11:3,12, 14;12:1,2,7,14;13:10, 14,20;14:9,12;75:10, 11,21;94:8,9,10,11, 12,13,21;95:4,10,16; 96:6,21,25;97:2,10, 12,17,20,23,25;98:3, 9,14,16;99:1,4,13; 100:2,16;101:5,10, 14,18,21;102:2,11, 14,24;103:5,8,18,24; 104:5,8,11,16;105:1, 4,11,14 Bustos' (6) 8:6;9:16;10:25; 11:20;96:15;97:4 buy (6) 69:10,12,15,18,19, 20	7:3;11:25;16:16; 82:3 care (2) 47:24;86:8 cared (2) 86:5;92:5 caregiving (1) 82:3 case (35) 13:9,15;14:9; 31:10,10;36:15;37:2, 9;38:15;39:5;42:8; 48:13,19;50:11;52:4; 64:5;68:22;70:22; 74:22;90:5,22,23; 93:9,20;94:16,22; 99:15,21;100:4,14; 101:14;102:5,8; 104:3,15 cases (7) 34:14,18;43:1; 74:10,11,14;91:14 cashier's (1) 78:6 Cause (31) 3:2;7:9,19,21;8:2, 4;9:15,17,21;10:22, 23,24;11:19;12:5; 17:10;30:6;31:2; 38:14;51:10;95:13, 17,23,24;96:3,14; 97:4,23;99:20;101:8; 103:7;105:13 causes (1) 31:13 CC (5) 3:6,14,17,20;4:2 cede (1) 14:15 Ceron (1) 91:23 cert (2) 74:8,12 certain (12) 15:8,9;16:13; 22:11;23:8;45:24,25; 53:6,7;57:10,11; 94:18 certainly (9) 12:24;45:8;46:14; 52:23;53:14;56:2; 58:17;62:3;90:12 certified (2) 78:6;102:21 certiorari (7) 73:11,13,15;74:15, 19,20;75:2 cetera (1) 24:7 challenge (1) 13:7 chambers (2) 7:16;17:13	chance (10) 23:4;47:7;51:16; 66:21;76:3;95:11; 99:5;100:1;101:11; 103:15 change (1) 43:4 channeled (1) 91:23 Chapter (2) 76:24;87:20 charged (1) 69:8 check (6) 22:25;23:7,8;78:6, 6,7 checks (1) 23:11 children (1) 20:25 Chodoff (1) 4:20 Christy (1) 74:24 church (1) 48:17 Circuit (1) 73:12 circumstance (2) 44:22;53:5 circumstances (4) 45:17;53:18;57:10; 102:23 cite (2) 31:9;74:10 cited (5) 38:20;45:22;74:11, 22;91:16 cites (1) 31:10 citing (2) 42:8;46:17 citizens (1) 86:23 civil (3) 92:11;93:18;94:1 Claim (105) 3:21;8:20;13:7; 14:10;15:12;16:3,4,5, 15,16,17,18;17:3,4,5, 7,8,21;18:4,14;23:17; 26:18;27:12,16,16; 28:3,4,6,6,13,17; 30:9,12;31:15;36:21, 24;37:19,20;38:6,8,9, 13;42:10,14,17,19, 21;43:19;51:6,22; 52:8,12,14,23,25; 53:8,10;54:23;60:18; 61:4,6,8,11;62:18; 63:3;64:7,15,17;65:4, 7,7;66:24,24;67:2,15, 19;68:15;73:5,6;	74:2,2;76:8,15,16,21, 23;77:1,4,6;78:24; 79:3;84:1,1;87:23; 98:24;100:5,7,23; 101:2,3,14,15,17; 103:10,13 claimant (3) 18:15;28:16;38:15 claiming (2) 20:16;42:4 Claims (70) 3:7,7,8,12,15,17, 18,18,21;6:14;7:6; 8:19,22,24;9:3;10:1, 2,7,13;11:3;12:13; 13:25;14:21;15:4,8,9, 11,14;16:6,11,20,23, 24;17:16,19,20;20:8; 23:18;26:18;29:1,1, 23;36:18,19,20;41:9; 42:15;46:25;51:8,12; 57:14;60:9,13,15,15, 19,24;61:22;66:22; 73:23;76:6,8;86:2; 90:18,20;95:20,20; 98:7,10;103:1 claim's (1) 27:15 clarification (2) 37:14;58:13 clarify (1) 77:16 class (1) 91:14 clear (12) 33:21,23;37:17; 38:12,16,18;46:6; 56:1;57:17;59:11; 100:23;104:13 clearly (4) 45:12;53:13;93:23; 100:22 clerk (3) 11:14,15;88:12 client (7) 94:23;97:19;100:9, 10,23;101:2;103:13 clients (1) 89:1 client's (2) 100:7;103:10 closed (2) 67:12;88:18 cognizant (1) 13:24 collapse (1) 91:25 colleague (1) 60:10 colleagues (5) 22:2;53:24;54:15, 18;55:7 collect (1)	10:6 collecting (1) 56:6 coming (3) 12:14;44:7;67:22 commenced (1) 18:9 commencement (2) 18:25;23:13 comment (1) 13:1 communicate (1) 45:3 communicate (1) 45:24 communicated (1) 46:19 communicates (1) 43:5 communication (3) 33:7;44:10;91:19 communications (2) 44:8;91:22 Company (10) 16:4,17;57:5; 59:13,14,16;63:20; 86:2;87:1;91:18 compensatory (5) 28:7;36:10;37:3; 55:2;76:20 complaining (3) 22:10;64:8,18 Complaint (7) 4:3;12:5,19;13:2; 47:9;67:5;93:8 complete (2) 83:14;103:19 completed (1) 67:10 completely (2) 56:20;91:14 complex (1) 94:22 comply (2) 12:20;104:23 components (1) 28:7 computer (3) 83:10,11,13 concern (1) 20:13 concerned (3) 19:22;67:23;94:16 concerning (3) 17:20;18:7;33:9 concluded (1) 105:21 concludes (3) 9:4;10:17;11:3 condition (1) 86:19 conduct (2) 10:20;56:25
C				
Cal (2) 73:22;74:24 calendar (1) 92:21 California (7) 29:20;73:23;74:1, 5,7,12,21 call (4) 45:11;95:6;98:1,22 called (5) 7:15;9:25;47:21; 71:2,3 callous (1) 91:19 calls (1) 12:7 came (14) 19:3,20;20:17; 47:21;48:17,25;69:5; 70:20;79:19;80:3; 94:8;98:18;99:11,15 can (39) 12:12;15:5;19:9; 24:5;25:21;26:1,9; 27:4;40:1,8,9;41:13, 20,20,21;45:11,21; 50:10;51:14;53:25; 54:18,21;55:2,9; 58:13,15;80:11; 82:23;83:5,6;84:17; 88:19,20;90:9;94:18, 21;100:16,25;105:1 capacity (3) 16:13;31:1;56:14 Capital (4)				

conducted (1) 17:1	contested (1) 19:8	73:2	18,20,23;90:4,9,11, 14,19;91:1,3,7,9,13; 92:4,16,18,21,25; 93:4,7,12,16,16,19, 24;94:2,4,8,9,11,19; 95:2,8,11,13,17;96:5, 9,14,23;97:3,5,11,14, 18,21;98:1,2,5,10,15, 22,23;99:2,5,14,25; 100:5,25;101:6,11, 16,19,25;102:10,13, 16,18,25;103:6,9,22, 25;104:7,10,12,17; 105:2,7,12,15,16,18, 20	21;45:19;48:21,22, 23;54:24;55:2;76:17, 20;78:24
confer (1) 54:16	context (3) 34:17;42:5;44:8	Court (446) 2:16;3:2;7:2,10,13, 14,15,21;8:5,6,12,17, 25;9:4,6;10:17,19; 11:3,5,7,10,14,18; 12:1,9,23;13:5,6,13, 18;14:2,4,6,8,8,16,22, 25;15:2,6,16,19,25; 16:8;17:14,23,25; 18:3,11;19:7,8,12,12, 17;20:6,12,20;21:11, 13,14,14,17,22;22:1, 8,13,19,21,22;23:3, 14,22;24:13,18,24; 25:1,8,12,20,23,25; 26:4,11,13,15,20,22, 24;27:4,8,10;28:2,19, 25;29:5,8,11,14,17, 19;30:1,8,12,14,16, 19,23;31:16;32:2,5,8, 13,16,21;33:1,8,11, 14,18,21,24;34:3,6,9, 21;35:5,11,15,17,19; 36:1,4,12,14;37:8,11, 16,23;38:8,18,22,24; 39:4,9,11,13,15,17, 21,25;40:15,17,20, 23;41:5,12,15,23; 42:2,12,19,23;43:1,4, 12,23;44:2,4,7,13,15, 20,25;45:2,6,11,15, 19,21;46:3,9,13;47:3, 9;48:3,19;49:5,7,14, 17,19,21,24;50:1,4,8, 10,12,14,16,18;51:1, 4,15,18,22,25;52:15, 16,25;53:12,16;54:4, 8,11,14,17,21;55:1,5, 11,13,22,25;56:6,9, 11,19;57:12;58:2,6,8, 11,14,17,19;59:1,16, 20,22,24;60:2,4,7,11; 61:16,20,24;62:5,8, 11,13;63:1,6,8,14,16, 20,24;64:3,7,12,15; 65:4,6,14,19,23;66:1, 3,6,13,16,18,20; 67:16,18;68:1,3,8,12, 14,19;69:10,12,15, 18,20,23,25;70:4,6,9, 12,18;72:10,13,21, 24;73:7,10,16,18,20, 22,25;74:5,7,14,18; 75:3,4,7,10,12,17,20, 22,25;77:9,12,17,19, 22;78:1,8,17;79:4,8, 13,15,17,22;80:11; 81:6,10,13,15;82:12, 15,19,22,25;83:5,16; 84:2,4,17,20,23,25; 85:2,13;87:5,20,23; 88:1,20;89:2,4,11,14,	Data (1) 31:11 date (8) 10:11,12;22:9; 23:8;40:4;47:11; 88:6;104:2 dated (5) 8:11;9:23;19:13; 34:25;95:22 day (9) 13:20;15:24;19:2, 19;20:23;44:20; 80:14;81:12;92:24 days (40) 7:16;11:15;13:5; 33:19,21,25;34:1,3,6, 12;35:2;40:6;43:17; 44:17;46:20;52:7,21, 21;78:14;80:16,16, 18,25;81:3,4;82:14, 14;83:21,23;84:7,15, 16,21;85:4,23;87:2, 12,13,14,15 deadline (2) 47:11;103:23 deal (6) 45:7;74:14;75:12; 86:4;92:21;104:17 dealing (21) 28:14,23;30:25; 31:4,6,17;34:14,16, 23;35:6,8;37:19; 38:5;46:24;51:19,23; 52:9,12;57:15;73:22; 92:11 dealt (3) 29:15;31:13;72:12 DEANNA (1) 6:14 debtor (13) 16:16,17,18,19; 57:6;60:21;62:21; 78:8,11,18,18,20; 82:15 debtors (23) 16:21,22;19:4; 30:9;51:9;56:13,24; 60:19;62:20;64:12; 67:6,7;68:9;69:25; 70:12,13;77:1,11; 80:14,22;83:22; 85:22;88:1 debtors' (4) 17:1;41:2;60:23; 104:19 Decatur-Bank (1) 92:7 decide (5) 12:23;13:21; 104:19,20,21	
Confirmation (11) 3:12,20,23;11:24; 13:10,11,15;17:20; 82:5;99:15,21	contin (1) 91:25		courtroom (4) 15:20;24:9;75:23; 89:6 courts (1) 29:16 Court's (4) 11:18;57:2;79:24; 90:13 covenant (22) 28:14,22;30:24; 31:3,4,5,17;34:13,16, 22;35:6,8;37:18; 38:3,4;46:23;51:13, 18,22;52:9,11;57:14 covered (1) 101:8 Covra (3) 31:9;39:5;42:8 create (4) 10:1;31:7;43:18; 98:7 creates (1) 44:11 Credit (13) 81:24;82:1,10; 83:22;84:7,15,21; 85:4,10;87:9,13,15; 89:19 credited (2) 21:24;84:14 crux (1) 28:10 current (3) 9:7;18:19;96:9 custodial (2) 16:21,23 custodian (1) 16:13	
confirmation (1) 63:2	continued (1) 104:2		D	
confirmed (1) 80:23	contract (6) 31:7,18;37:19; 42:7,7;98:21		damage (3) 37:12;39:2;76:17 damaged (1) 86:1 damages (22) 28:7,8;36:5,9,10, 11,16,22,25;37:3,3,5,	
confused (3) 63:9;65:21,24	contractor (1) 86:17			
Connecticut (1) 93:16	contractors (1) 88:8			
connection (6) 23:25;36:21,23; 65:8;93:25;96:19	contracts (2) 31:19;35:12			
Conrad (3) 6:3;8:20;95:21	contractual (1) 42:5			
consecrated (1) 88:23	contributing (1) 92:6			
consequential (1) 77:6	control (2) 52:10;57:19			
consider (7) 35:21;42:20;43:12, 13;52:15;90:2; 104:22	controls (1) 51:24			
considered (1) 44:23	convenient (1) 54:17			
consistent (2) 31:24;33:6	conversation (3) 33:2;84:12;87:7			
consistently (2) 37:1;82:13	conversations (1) 88:13			
consolidated (1) 16:24	convincing (2) 38:16,18			
constitute (2) 8:9;97:8	copies (3) 24:19;25:3,17			
Constitution (1) 48:1	copy (3) 23:7;56:21;89:8			
construct (1) 42:19	Corporation (2) 63:17;65:9			
construction (1) 38:9	corrected (3) 13:8;85:24;87:17			
constructive (10) 37:20;38:13;42:3, 5,11;46:18;52:25; 53:9,15;57:15	correctly (1) 78:19			
construed (1) 56:13	costs (2) 20:20,21			
contact (2) 15:23;31:2	Counsel (12) 6:16;7:25;14:2; 15:23;16:9;18:11; 27:22;47:10,19; 77:25;78:15;104:16			
contacted (1) 48:14	counsel's (1) 104:19			
contemporaneous (1) 41:21	counter (1) 86:11			
contends (3) 23:24;32:13;39:24	country (1) 50:21			
contention (1) 13:7	County (1) 74:23			
contentions (1) 103:2	couple (2) 42:12;63:3			
	course (1)			

deciding (2) 46:22;51:20	Developers (1) 82:5	11:19	during (4) 64:4;86:13;88:24; 91:18	58:2;65:15;71:1; 72:10;88:19;89:5,6, 15
decision (4) 14:11;50:9;74:25; 75:1	development (2) 82:2,4	24:1;28:10;35:24; 68:3;78:9,19	duties (1) 31:7	e-mail (2) 25:21,21
decisions (1) 63:4	dialogue (1) 13:25	disputed (8) 23:16;28:20;29:5; 32:10;36:3;45:3; 52:16;57:8	duty (10) 31:3;42:6,24;43:6, 18,25;45:23;53:3,7; 92:12	e-mailed (1) 83:7
declaration (9) 9:19;27:22,24; 59:9;70:16;72:16; 76:13;93:10;97:22	difference (2) 37:21;38:1	disputes (1) 36:15	E	e-mails (1) 80:23
deed (2) 48:11;56:23	different (3) 35:23;45:13;49:2	disregard (5) 39:6,15,17;40:10; 52:17		employee (1) 57:9
deemed (1) 16:24	difficulty (1) 91:21	District (2) 31:12;92:8	E*Trade (1) 63:22	employers (1) 89:1
defendant (1) 30:20	diligent (4) 80:4;85:10;86:8; 92:5	Dlin (2) 61:10,24	earlier (7) 23:25;52:1;54:22; 96:4;99:3,18;104:14	end (1) 71:22
defense (3) 8:9;13:7;97:7	diligently (1) 86:16	D-L-I-N (1) 61:24	easier (1) 26:4	ended (3) 20:11,21,24
defenses (20) 8:8,13,23;9:3,5,11; 11:1,9;96:2,6,7,19; 97:6,16;99:8,23; 101:4;103:1,15; 104:4	Din (1) 61:24	Doc (2) 3:6,11	easily (1) 31:13	enforce (1) 31:25
defer (2) 52:11;53:1	direct (1) 25:1	Doc# (3) 3:14,17,20	Eastern (1) 31:12	enforcing (1) 31:1
demurrer (9) 29:16,17,18,24,25; 30:1,2,3,4	directed (7) 7:18;8:12,13; 10:25;18:11;19:17; 22:1	Doc#15 (1) 4:2	ECF (3) 15:5;89:21;93:8	engage (2) 53:24;55:6
denial (1) 13:7	directing (1) 10:21	docket (15) 7:12;9:22;10:16; 27:17,19,20;60:16; 61:5,6,7,8,9;76:9,10; 104:24	effect (2) 51:5;63:2	engaging (1) 43:8
denied (1) 93:16	directly (4) 43:5;67:25;88:8; 98:20	document (3) 57:6;79:6;82:6	effort (1) 60:23	engineer (1) 83:9
Dennis (4) 9:19;10:4;97:22; 98:12	Director (1) 6:14	documentation (3) 33:10;56:20;67:14	egregious (1) 40:2	enough (4) 10:13;46:14;48:20; 78:16
Department (1) 74:23	disabled (1) 49:11	documenting (1) 88:13	eighteen (1) 60:18	enter (10) 10:20;11:7,10; 13:24;51:4;52:3; 53:19;85:9;88:21; 105:7
departments (1) 91:20	disagree (2) 74:9;80:6	documents (10) 18:23,23;21:25; 26:6;66:25;89:7,11, 14;91:3;93:1	Eighty-Fourth (6) 3:6;14:14,20,22, 23;15:3	entered (11) 7:19;8:17;11:14; 13:14,18;16:22; 18:18;89:17;93:20, 24;95:17
deputy (1) 89:6	disagreement (1) 19:3	dollar (2) 36:18;54:23	Eighty-Second (5) 3:17;14:22;60:9, 14;73:5	entire (2) 7:20;95:25
described (2) 17:6,8	disallowed (2) 16:6;17:9	dollars (32) 10:10;11:8,10,11, 13;13:14;16:5;17:3; 28:5,7,8,8;36:10,10, 11;47:15;68:5;69:2, 7;70:22;71:6,24; 76:16,18,20;99:7,9, 12,19,23;101:23; 102:4	either (8) 22:2;42:6,9;53:15; 57:15;91:1;94:20; 104:14	entirely (2) 12:5;96:16
describing (1) 10:20	discharge (1) 47:23	dollars' (1) 47:15	elaborate (1) 55:3	entitle (1) 103:14
design (1) 89:1	discharged (1) 88:7	done (3) 8:6;92:14;97:5	Elda (6) 3:12;6:20;17:21, 21;19:13;27:3	entitled (2) 17:2;37:3
designated (1) 28:4	discuss (2) 19:21;54:15	doubt (1) 94:4	Electric (1) 31:11	entitles (1) 101:19
designed (2) 64:21;83:9	discussed (2) 18:14;102:6	down (1) 75:12	electronic (1) 90:5	entries (1) 22:11
designer (2) 83:8;88:21	discussion (1) 43:8	drawn (2) 21:24;23:8	elements (3) 42:10;45:3;76:18	entry (2) 11:16;15:13
detailed (1) 88:23	discussions (3) 53:25;55:6;85:20	due (3) 61:2;73:1;83:23	eleven (14) 8:7,23;11:8;64:20; 96:1,6,19;97:6,15; 99:8,23;101:4; 103:14;104:3	equity (5) 36:7;38:6;41:19; 47:15;64:9
determination (1) 40:8	Dismiss (7) 4:3;12:19,21; 29:21;75:14;93:6,8		eleven-percent (1) 64:22	equivalent (3) 42:16,20;53:10
determine (2) 46:13;83:6	Dismissal (6) 9:18,20;93:19; 94:4;96:25;97:22		else (11) 26:25;46:15;50:16;	ergonomics (1) 83:9
determined (3) 17:2;54:24;60:25	dismissed (2) 20:18,18			error (7) 77:7;80:9,10;82:6,
	dismisses (1) 94:2			
	disposition (1)			

8;83:24;84:14 eScribers (1) 4:21 especially (2) 92:11;102:4 Esq (4) 3:4;6:8,16;9:21 Esquire (2) 7:11,23 essence (1) 78:23 essentially (11) 18:21;23:1,6;28:5; 31:5;32:17;36:6; 47:3;53:9;77:5,10 establish (4) 8:14;9:2;43:14; 55:3 established (1) 28:16 establishes (1) 93:23 establishing (1) 22:16 establishment (3) 9:9;96:12;103:4 estate (1) 77:2 estopped (1) 76:25 et (1) 24:7 even (16) 9:3;20:19;21:3; 30:1;35:13;45:23; 49:10,12;68:24;77:4, 11;101:23,24,24; 102:5;103:17 evening (1) 12:14 event (5) 9:1,1;12:18;87:12, 16 events (2) 41:23;77:6 evidence (12) 9:6;19:9;24:3; 28:17;38:16,19; 48:12;56:23;57:7; 59:24;60:20;96:8 evident (1) 9:10 evidentiary (17) 23:15,18;24:4; 28:21;29:2,6;41:1, 15;45:7;46:7;52:12; 53:17;54:1,4,16; 56:3;95:5 exact (1) 105:15 Exactly (3) 30:15,18;34:15 exaggeration (1)	20:5 examined (1) 60:22 excellent (1) 86:19 except (1) 80:8 excessive (1) 101:22 exchange (2) 25:3,15 excuse (6) 7:9;19:6;27:2; 35:1;67:2;74:23 excused (3) 27:4;60:5;85:14 execute (1) 80:19 executed (3) 81:2,8,22 Executive (1) 16:19 ex-Green (1) 47:22 exhibit (5) 25:12;27:23,25; 59:8;93:11 exhibits (6) 25:3,9,15,18,18; 26:5 exist (1) 31:8 existing (7) 9:7,9;42:6;96:10, 11;103:2,4 exists (1) 8:5 expect (3) 24:15,16;100:24 expense (1) 12:22 expensive (1) 50:23 experienced (1) 86:10 explain (6) 20:22;21:7;41:3; 84:2;94:12;99:22 explained (2) 53:20;101:3 explaining (3) 8:4,8;97:7 explanation (1) 103:16 expunge (1) 60:18 expunged (4) 16:7;17:9;18:5; 79:3 extended (1) 86:24 extension (4) 9:8;96:11;101:7;	103:3 extent (3) 29:1;30:25;31:21 extortionate (1) 64:20 eye (1) 47:8 eyesight (1) 79:25 Eyster (2) 91:12,21 F F2d (1) 31:12 face (1) 91:15 facilities (1) 16:14 facility (1) 86:8 facing (1) 40:3 fact (20) 18:7,16;23:16; 28:20;29:6;32:10; 36:4,8;38:17;52:16, 19;57:5;59:15,17; 78:2,7;80:19;83:8; 101:6;103:20 facts (10) 46:9,9,10,11;52:4, 24;57:18,23;62:15; 67:2 factual (1) 57:16 fail (3) 29:1,1;51:11 failed (7) 8:12,15,15;10:25; 13:10;83:11;93:24 failing (2) 99:19,20 fails (1) 9:2 failure (9) 11:5,12,20;13:15; 81:20;85:13;91:13; 93:19;94:2 fair (20) 28:14,23;30:25; 31:4,6,17;34:14,16, 22;35:6;38:4;46:23; 47:25;49:10;51:18, 23;52:9,12;57:15; 102:4 fairly (1) 23:19 faith (20) 28:14,23;30:25; 31:4,5,17;34:13,16, 22;35:6,8;37:18;	38:4;46:23;48:7; 51:18,23;52:9,12; 57:14 fall (1) 88:24 falling (2) 47:14;69:4 false (1) 38:16 familiar (3) 10:2;57:2;98:11 family (1) 48:16 far (5) 32:24;67:22,24; 94:16;105:4 Fargo (11) 15:12,14,20,24; 16:11,15,20,21,24; 17:2,10 Fargo's (1) 16:23 fault (1) 47:14 favor (1) 30:5 fear (2) 35:8;37:19 February (7) 7:20;8:17;15:5; 64:4;87:21;95:18,22 Federal (19) 3:3;7:10,22;10:3,9, 18;11:4;74:14,18; 81:24;86:6,7;87:9; 91:13;92:9;93:18; 94:1;95:14;98:11 fee (2) 67:25;78:21 feel (4) 40:13;48:2,6;92:12 fees (2) 28:9;78:12 felt (1) 48:19 few (6) 49:17,21;83:21; 84:7,21;85:4 fight (1) 48:17 figure (3) 48:21;49:12;77:24 figured (1) 48:21 figures (4) 48:15,16,18,18 figuring (1) 48:22 file (8) 8:4;16:2,9;17:10; 67:12;73:17;103:14, 15 Filed (63)	3:8;8:11,20;9:22; 11:25;13:3,4;14:5; 15:4,10,12;16:11,15; 26:18;27:16,17,18, 19,20;28:3;29:16; 48:24,25;50:6,7,13; 60:16,16;61:5,6,8; 67:5;73:14;75:1; 76:8,9,10,11,15;79:6; 80:8;82:6,16;86:1; 87:20;89:21,23,24; 90:5;91:2;93:2,8,10, 12;95:21;96:24; 99:16;100:6;102:1; 103:12,25;104:17,25 filing (6) 15:24;77:3;90:6, 21;102:18;103:23 final (3) 74:8,19,21 Finally (1) 91:22 finances (1) 88:3 Financial (6) 63:11,13;65:12; 66:5;68:4;91:25 Financial/GMAC (2) 67:25;69:22 financing (1) 16:15 find (4) 20:17;48:5;88:17; 90:16 findings (1) 80:7 finds (3) 10:17;11:3;52:16 fine (4) 24:13;60:2;82:25; 100:10 finish (5) 14:9;51:15;59:2; 68:11,18 finished (2) 27:11;102:25 firm (8) 9:25;10:2,2,21; 88:16;91:12;98:10, 10 first (12) 7:8;29:9;51:5; 56:11;61:21;62:1,14; 66:21;67:20;76:3,23; 79:24 five (6) 44:17;47:13;56:25; 57:1;71:7;72:1 fix (1) 48:9 fixed (3) 36:17;41:10,20 Floor (1)
--	---	---	--	---

6:5 floors (1) 86:15 fly (1) 102:8 focus (1) 83:16 focusing (1) 31:18 Foerster (4) 7:6;17:16;80:4,13 folks (2) 68:23;70:24 follow (1) 93:24 followed (3) 12:25;77:7;93:22 following (2) 21:3;51:5 follows (2) 8:3;9:1 forbear (4) 32:9;17;34:11;52:6 forbearance (2) 32:6;52:3 forbearing (1) 52:7 forced (1) 64:8 foreclose (8) 33:3;35:20;44:15; 17:22;45:4;52:20; 85:23 foreclosed (7) 34:7;12;35:3,23; 41:25;52:22;81:19 foreclosure (36) 18:9;16,25;20:15; 16:21;2:23;13;28:12; 32:18,18,23;36:7; 38:7;40:4,5,7;43:9; 10,16,18;47:19;48:3; 52:8;55:20;56:2,23; 67:3,4,8,12;70:23,24; 71:11,15,19;93:15 forego (1) 78:11 foreign (1) 50:21 Forester (1) 76:6 forgive (2) 71:7;72:1 form (1) 9:4 formed (1) 102:22 forth (2) 12:25;86:3 forty (1) 10:14 forward (20) 13:11;15:11,17;	23:19;32:18;40:5; 41:19;43:9,10,17; 46:6;52:7;53:16; 54:1,2,15;62:1,13; 76:7;101:2 found (6) 15:5;38:2,3;70:25; 96:7,15 four (5) 15:11;16:11,24; 61:3;71:4 fourteen (3) 11:15;47:22;61:21 frame (1) 36:4 Frankel (1) 14:18 Frankly (2) 39:3;66:25 fraud (39) 28:14,23;31:15; 35:13,14;37:19;38:3; 8,9,10,13,14;39:6,7, 20;42:3,5,7,11,19; 46:15,18;48:13,20; 50:7,10;52:14,15,15, 23,25;53:9,15,15; 57:15,15,15;88:15; 100:22 Freddie (1) 68:14 Friday (1) 49:6 frivolous (12) 9:5;12:5;96:8; 99:23;100:11,13; 101:13,15;102:1; 103:14,19;104:9 front (2) 20:25;100:18 fully (2) 29:23;64:18 Funding (7) 16:4,17;57:5; 59:12,14,16;63:20 funds (4) 82:3;86:3;87:3; 88:6 further (11) 19:9;27:25;33:12; 47:17;53:24;55:3; 76:11;85:15;96:14, 15;104:24	19;62:1,9,10,10,11, 12,25;63:8,9,15,16, 16,19,23;64:2,6,11, 14,24;65:5,10,16,21, 24;66:2,4,11,12,15 Gay's (3) 62:14,17,23 general (7) 17:3,4;28:3;44:22; 45:2;76:16;100:4 generally (1) 74:12 gentleman (1) 67:21 gentlemen (1) 67:23 gets (1) 90:5 Given (4) 39:23;71:24;89:8; 103:21 gives (1) 68:15 giving (2) 47:7;100:1 GLENN (1) 2:24 Glynn (1) 91:12 GMAC (45) 16:5,18;17:5; 18:18;23:8;28:11; 30:5,9,25;31:25;32:2, 5,14,22;33:7;34:23; 40:3,20;41:24;43:15, 15;46:19;47:17,21; 48:24;52:17;53:12; 57:9;63:10,11,13; 64:1,3;65:13,25; 66:5;68:8,12,12; 76:17;77:21;79:1; 82:16;93:4;100:22 GMACM (2) 17:8;43:19 GMAC's (1) 44:22 God (6) 48:1;50:19;58:4, 25;60:6;92:17 goes (4) 9:14;40:25;96:14; 101:2 Good (38) 7:5;13:20;14:17; 17:10,15;26:23; 28:14,23;30:24;31:4, 5,17;34:13,16,22; 35:6,8;37:18;38:4; 46:23;47:6;48:7; 51:18,22;52:9,12; 57:14;65:3;70:11; 78:16;86:19,22;89:3; 92:24;100:23;	101:15,16;103:13 good-faith (2) 100:14;101:7 Gramoot (1) 91:23 granted (1) 91:15 grants (1) 93:13 great (1) 86:4 Green (2) 2:17;50:21 guarantee (3) 44:16;45:4;104:6 guess (2) 36:2;77:6 gun (1) 50:3 GWENDELL (3) 6:12;76:8;79:5	H HAMP (19) 33:3;35:21;40:6; 43:12,13,16;44:16, 18;52:20;67:7,11; 71:2,3,9,9,21,22; 72:4,18 hand (2) 22:18,21 handicapped (1) 49:11 handled (2) 86:9,25 hang (1) 26:25 hanging (1) 84:2 happen (2) 53:23;71:4 happened (6) 41:4;70:2;81:1,18; 83:15;87:2 happens (1) 74:19 happy (1) 63:5 hard (2) 104:18;105:9 hardwood (1) 86:15 head (3) 19:10;94:23;104:5 health (4) 79:20,25;87:3; 88:11 hear (5) 47:4;79:4,23; 82:17,23 heard (3) 12:7;46:5;61:14	Hearing (29) 3:2,14;7:25;23:16, 18;24:4,15;25:4,18; 26:7;29:3,6;41:1,16; 45:7;46:7;52:13; 53:17;54:1,4,16; 56:3;61:12,13;80:1; 82:19,21,22;95:5 heart (1) 20:24 held (2) 36:16,20 Hell (1) 68:24 Hello (1) 49:25 help (5) 14:4;47:19;48:17; 49:12;58:7 here's (4) 83:16;89:20; 102:10,13 HEROLD (2) 6:13;61:9 Heyward (6) 75:15;93:4,15,22, 23;99:16 hide (1) 50:23 high (1) 64:9 highest (1) 48:6 hinder (1) 64:21 Hinkle (1) 88:12 historic (3) 86:7;92:7,7 history (5) 24:17;82:1;85:7; 86:22;93:14 hold (1) 67:8 holder (2) 32:3;61:11 holding (1) 61:19 home (18) 18:13;19:6;22:2; 33:3;41:25;64:9,9; 69:22;81:19,19; 85:16,18,18;86:6,9, 12,15;92:8 Homecoming (5) 63:10,13,24;65:12; 66:4 Homecomings (4) 68:4,10;70:17; 82:13 homes (1) 86:10 HON (1)
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2:24 honest (1) 94:23 Honor (141) 7:5,8;11:21,22; 12:4,12,16;13:21,23; 14:7,12,13,17;17:12, 15;18:2,3,4;19:11,16, 20;23:6,25;19:26;12, 14,16,21;27:2,9,14; 28:5,10;29:7,30:3,15, 18,22,25;31:9,20; 32:4,7,20,25;33:17, 20;34:5,8,20;35:14; 37:15,22;38:11,14, 20;39:3,8,16,20,22; 40:19,25;41:8,17; 42:1,4,22,25;43:3; 45:1,20;46:2;47:6; 48:2;49:4,16;50:25; 51:3,14;54:7;58:1, 10;59:3,9,19,25;60:3, 8,12,14,17;61:23; 62:3,4,15;63:3,5; 64:24;65:16;66:17, 23;67:1;68:7,22; 70:14;73:4,6,8,17,24; 74:4,6,10,16,22;75:6, 8,16,24;76:5,15; 77:15;78:13,22,23; 79:12;83:3;84:10; 85:6;89:10,22;90:12; 91:5;93:3;94:7,10; 100:2;102:2;103:18; 105:1,17 honorable (2) 47:23;92:9 honor-bound (1) 92:12 Honor's (1) 37:13 hope (3) 53:22;54:19;101:1 hopefully (1) 90:16 hopes (1) 9:12 HORST (1) 6:14 hours (3) 10:13,15;86:16 house (15) 19:20;20:15,23; 21:1;48:7;84:24,25; 86:1,4,18,18;88:5,9; 92:3,8 houses (1) 48:8 housing (1) 70:20 Huelbig (7) 9:20;97:22,24; 98:12,18,19,20	H-U-E-L-B-I-G- (1) 9:20 Huelbig (1) 10:4 hypothetical (2) 42:13;76:18 I identified (3) 28:13;77:2;78:25 identifier (1) 25:13 II (2) 3:8;7:9 III (1) 11:23 illegible (1) 57:4 illuminated (1) 80:8 immaterial (1) 75:1 immediately (4) 65:11,11;83:7,12 impasse (1) 19:6 implied (10) 28:14;30:24;31:3, 3,5;34:13,16;35:7; 38:3,4 important (2) 86:7;87:11 Impose (7) 3:2;7:10,21;8:5; 95:14;101:12;102:3 imposing (1) 11:7 improperly (1) 11:9 inability (1) 64:19 Inc (2) 16:19;38:21 incarcerated (1) 88:15 included (2) 20:20;76:24 including (1) 36:16 inconvenience (1) 26:3 incorporated (4) 9:15;10:24;13:19; 95:22 incorporates (1) 95:18 incur (1) 12:21 indicate (1) 89:5 indicated (6) 9:24;21:20,23;	22:13;62:24;83:17 indicating (1) 12:14 indication (1) 91:17 indicted (1) 55:17 indifference (1) 91:19 individual (1) 92:10 individually (1) 61:15 inducement (1) 42:7 indulgence (2) 79:25;90:13 industrial (1) 83:8 inference (1) 33:25 information (2) 88:20;102:22 informed (1) 16:1 inherent (1) 41:18 initially (1) 46:24 initiative (1) 10:19 inkling (1) 9:4 inquiring (1) 9:24 inquiry (1) 102:22 insisting (2) 94:25;102:7 instance (1) 76:23 instead (2) 52:7;56:22 instruct (1) 19:7 instructed (1) 105:15 Insurance (2) 86:2,17 integrity (2) 86:21,22 intend (2) 25:3;57:25 intended (2) 55:22;59:13 intent (3) 39:1,7,21 intentionally (2) 38:25;48:2 intentions (1) 16:1 interest (11) 30:13,16,20;51:10;	62:19;63:21;64:9,20, 22;68:10,14 interesting (1) 100:8 internal (3) 40:13,20;91:20 interpret (4) 16:2;41:3,6,6 interrupt (5) 21:17,22;22:8; 37:5;83:19 interrupting (1) 68:18 into (16) 13:19;16:22,24; 18:18;47:11;52:3; 62:22;64:8;70:23,24; 71:11,15;72:17; 88:21;95:22;105:3 introduced (1) 82:5 Inv (1) 31:11 investigation (1) 17:1 invoice (2) 10:11,12 invoke (1) 12:6 involving (1) 43:23 issue (37) 23:16;28:19;29:2, 12;33:14;36:3,23; 37:12;43:20;45:13; 46:2,17;52:24;53:1,2, 19,25;55:23;56:2,12; 57:24;59:20;60:25; 66:10;73:1;77:14; 80:5,17;81:5;83:11; 84:5;85:18,19;87:11, 19;90:20;91:13 issues (11) 19:8;28:20;29:5; 32:10;52:16;57:16, 16,19;72:22;85:8; 92:11 item (4) 17:18;26:17;60:8; 76:7 itemized (3) 19:21;21:5,9 items (3) 19:21;20:2;54:23 IV (2) 14:13;15:1 J Jack (4) 81:24;85:20;87:9, 15 January (6)	60:16;67:5,6,6; 72:18;82:11 Javier (1) 74:24 Jeffrey (3) 55:15,23;59:13 Jersey (1) 18:14 JOHN (3) 6:18;26:18;27:17 Jordan (3) 12:12;17:15;76:5 Joseph (1) 3:9 Jr (7) 6:3;8:21;9:20; 10:4;95:21;97:22; 98:13 JUDGE (8) 2:25;48:13,19; 50:4;70:8;86:6,7; 92:9 judgment (1) 74:8 judicata (2) 74:1,11 judicially (1) 76:25 July (4) 18:9,25;20:16; 63:25 June (2) 63:24;82:5 K KATHY (3) 6:16;27:22;76:13 keep (2) 14:8;47:10 keeps (2) 94:25;102:7 KENNETH (1) 6:19 kept (2) 21:3;100:21 Key (2) 91:12,21 knew (5) 20:18,19;69:8; 80:2;88:14 knowing (3) 21:1;49:11,11 knowingly (1) 38:25 knowledge (4) 41:2;70:14;88:10; 102:21 Kramer (2) 14:15,18 L
---	---	---	--	---

labor (2) 86:16;88:9	less (1) 36:19	81:25;87:18	March (11) 2:20;8:1,3,11;9:23; 18:12;19:13;27:18, 19:61;2;67:4	58:19
lack (1) 91:19	letter (12) 9:22;14:5;19:13, 15:33;14,15,16,24; 34:25;35:1;97:19; 98:6	loans (2) 16:14;55:18	Maria (5) 3:12;6:20;17:21; 19:1,13	memorandum (5) 8:18,21;95:18,21; 96:2
lacks (1) 79:3	Levin (2) 14:15,18	logical (1) 33:25	marketable (2) 86:19,19	mentioned (1) 59:9
Las (2) 9:25;98:7	Liability (8) 3:18;19:5;28:11, 22:60;15;61:1;62:23; 76:22	long (6) 47:18;48:22;74:8; 98:18;104:18;105:9	MARTIN (1) 2:24	merit (3) 77:5;79:3;99:9
last (11) 7:23;12:14;18:4; 21:14;67:21;81:6,11, 12:94;20;100:17; 101:11	lie (3) 30:20;43:19;51:23	Look (14) 20:6;32:9;44:5; 45:11;71:16;75:4,7; 83:3;86:21;90:24; 100:5;101:21;102:2; 103:22	master (1) 59:18	merits (4) 94:5;97:15;103:21; 104:18
lastly (1) 13:23	lien (1) 87:10	looked (1) 56:24	material (2) 38:17;90:1	MERS (1) 57:10
late (18) 75:10;78:11,12,20, 21;80:18;81:4;82:14, 14;85:23;86:6;87:2, 12,13,15;94:8,12; 99:12	life (1) 50:20	Lord (1) 70:11	materials (1) 88:9	MERS' (1) 91:13
later (6) 34:6,12;52:7,22; 71:21;102:19	likely (1) 46:3	lose (1) 84:25	matter (21) 7:8,19;11:22;13:9; 14:13;17:18;26:17; 28:25;29:2;36:9; 58:8;66:8;75:9,19; 78:3;83:8;90:1; 94:15;95:25;103:20; 104:12	mess (2) 49:13;71:15
law (38) 9:7,7,9,9;10:21; 28:25;29:2,12,42;14; 43:2,23,24;50:23,23; 51:23,24;52:10,10; 53:4;73:23;74:2,2,5, 7,12,20;94:17,19; 96:10,10,11;100:11, 15;101:7,7;103:2,4,4	limitation (1) 36:5	losing (2) 81:19;85:18	matters (5) 55:1;57:20;80:5; 88:15;92:19	met (1) 87:16
laws (1) 96:12	limited (5) 41:8,19;56:14; 57:3;59:13	lost (5) 36:7;76:18;85:15, 17;92:14	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	Metropolitan (1) 38:21
lawyer (17) 21:19;22:4;25:10; 47:13;48:13,17,20, 25;49:1;58:17;70:11; 77:13,16,16,19,20; 100:9	line (3) 59:12;68:25;82:7	lot (2) 53:14;69:6	maybe (1) 94:24	Michael (1) 61:5
lawyers (3) 25:2;50:23;58:18	Liquidating (15) 3:6,9;4:2;6:16;7:7; 14:14,19;15:4,8; 27:23;41:9,19;75:13; 93:6,7	low (1) 47:8	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	midnight (2) 83:10,15
least (4) 12:7;26:2;34:17; 103:20	listen (2) 24:4;79:10	lower (5) 71:6,8,25;72:2,4	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	might (1) 28:2
Leave (2) 89:21;90:4	listing (1) 21:4	Lynne (2) 86:7;92:9	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	mind (1) 53:21
led (1) 23:13	little (5) 20:5,10;36:9; 94:23;96:21	M	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	minute (1) 74:17
left (2) 20:10;49:23	live (1) 79:17	Mac (1) 68:14	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	minutes (2) 19:2;20:4
legal (10) 10:15;46:10;51:8; 55:20;88:15;96:17, 18;98:23;101:1; 103:2	lived (1) 37:8	Mack (1) 36:24	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	miscellaneous (1) 66:24
lender (2) 32:1;64:18	living (2) 49:21;54:11	M-A-C-K (1) 36:24	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	miscommunicated (1) 40:17
length (1) 100:3	LLC (11) 4:21;11:25;16:16, 18;31:11;57:4,6; 59:10,14;63:20;68:4	mail (1) 55:20	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	miscommunication (1) 40:13
lengthy (1) 53:19	Lloyd (1) 79:5	major (1) 20:24	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	mislead (1) 39:1
	loan (50) 18:19;24:16,19,22; 31:24;34:9,17;35:21; 42:23;43:4,24,25; 44:8,14,16,23;45:22, 23;46:20;52:1,6,20; 53:3,5,8;62:18,20,23; 63:12,17,21,24;64:9, 10,13,16,19,21,22; 65:2;66:2,7;67:1,3, 24;68:4,9;70:17;	makes (1) 46:25	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	misled (2) 39:1;48:7
		making (12) 38:5;40:8;66:4; 70:25;71:12,14,17; 72:12;84:18;85:10, 15;101:13	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	misrepresentation (5) 42:16,17,21;43:19; 53:10
		man (1) 48:4	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	missed (4) 18:19;23:12;24:1; 71:16
		management (5) 13:10,15;99:15,21; 104:15	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	mistake (16) 35:9,15,17,20; 36:8;39:24;40:2,24; 41:24;45:12,12,13; 53:13,13,14;103:19
		manner (1) 86:3	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	mistakes (2) 35:11;101:22
		many (5) 29:20;58:18;86:16, 16;90:21	may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	mod (1) 72:18
			may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	modifi (2) 43:16;44:16
			may (22) 7:2;9:12;10:19; 13:4,6;37:3,16; 41:15;45:3,6;46:17; 49:14,17,19;57:9; 63:17,22;67:3;79:12; 82:15;86:10;90:20	modification (18) 9:8;33:4;35:21; 40:6;43:13,13,16;

44:17,23;46:20; 47:17;52:21;67:8,11; 72:18,23;96:11; 103:3 moment (1) 39:8 Monday (2) 23:20;24:8 monetary (1) 101:12 money (4) 10:13;48:9,10,16 MoneyGram (1) 78:5 monies (1) 71:24 month (1) 71:24 monthly (3) 71:7,25;72:12 months (5) 23:10,12;71:7,20; 72:2 more (8) 16:23;31:19;44:5; 47:19;53:14;55:9; 56:7;105:8 morning (14) 7:5;14:17;17:15; 26:23;47:7;49:7; 79:6;80:8;82:6;89:7, 13,24;91:1,8 Morrison (11) 7:6;17:16;47:10; 10:48;14:14;49:3,3; 76:6;80:4,13 Mortgage (27) 16:5,13,14,18; 17:5;18:18;20:17; 23:8;28:11;31:1; 33:7;34:17;62:16; 63:17;65:9,10,12; 66:24;68:12,12;72:7; 76:17;77:21;79:1; 82:13;86:24;93:5 Mortgage's (2) 30:5;31:25 most (2) 21:8;28:18 mother (1) 19:1 Motion (18) 3:14;4:3;9:19;13:4, 6;29:16,21;75:13; 93:6,7,11,11,12,13, 17;97:1;102:20; 104:21 move (3) 12:21;32:18;92:22 moved (4) 7:16;12:9,15;94:17 moving (1) 76:7	much (10) 17:25;26:13;35:22; 36:19;60:4;66:13; 68:8;91:15,21;92:23 multiple (1) 78:3 must (2) 38:16;42:6 myself (4) 19:6;47:24;86:15, 22 N Naftalis (1) 14:18 naive (1) 84:23 name (3) 20:3;48:11;79:5 namely (1) 11:1 Nathanial (1) 14:17 national (1) 92:6 Nationwide (3) 86:1,17;88:8 necessarily (1) 42:10 necessary (3) 10:1;53:16;98:8 need (7) 20:10;23:22;25:2; 26:7;82:21,22,23 needed (3) 10:6;82:3;83:12 Needless (1) 9:13 negligence (1) 35:12 negligent (5) 42:15,16,20;43:19; 53:10 negotiations (1) 81:23 neither (1) 30:8 Nevada (1) 98:7 New (27) 2:18,18;4:23;6:6; 9:9,25;10:3,5,8,14; 18:13;33:2;48:5; 49:2;54:6;56:15; 57:5;58:19,22;59:17; 86:18;96:12;98:2,6, 11,19;103:4 news (2) 70:21;71:1 next (6) 11:22;14:13;17:18; 26:16;48:24;66:16	nice (1) 76:1 nicest (1) 48:8 Nick (1) 91:12 night (2) 80:20;83:10 ninety (1) 88:13 Ninth (1) 73:12 nonappearance (1) 104:14 None (3) 62:20;64:12;68:15 nonfrivolous (3) 9:8;96:10;103:3 nonpayment (2) 71:8;72:2 nonpayments (1) 18:15 nor (3) 30:9;47:12;51:9 Norm (2) 7:5;60:12 notarized (1) 55:16 notary (3) 57:21,22,22 note (17) 26:24;31:21,23,24; 32:1,3,9;45:4;59:12; 62:19;63:10;64:25; 65:16,18,20;82:12; 86:24 noteholder (3) 34:10;52:2,6 notes (7) 24:19,22;27:11; 41:3,6;66:24;95:25 notified (1) 13:11 notwithstanding (1) 18:22 November (2) 28:4;68:15 nowhere (1) 50:4 null (1) 72:9 num (1) 7:9 Number (39) 3:15,21;7:3,12; 13:16;15:5,12;16:15, 16,17,18;17:5,7,8; 26:18;27:16,17,19, 20;41:10,20;55:1,25; 60:16;61:4,5,6,7,8,8, 9,11;66:22;76:8,9,10; 93:9,9;95:20 numbers (2)	8:20;61:6 NY (2) 4:23;6:6 O Objection (39) 3:7,14,18,20;8:20, 22,24;11:2;13:25; 14:14,20;15:4,7,10, 15,24;16:10;17:11, 20;18:6;26:18;27:13, 15,18,21,24,25;36:3; 51:5,19;60:9,15,17; 61:2;76:7,12;95:20; 98:25;100:7 objections (2) 42:14;93:12 objection's (2) 17:11;61:22 obligation (1) 31:23 observed (1) 51:25 observes (1) 56:19 obtaining (1) 64:9 obviously (6) 9:13;12:21;13:23; 37:8;40:12;76:1 occasions (1) 93:17 occurred (1) 84:14 October (8) 68:4,25;80:18; 82:16;83:2,7,17;84:6 Ocwen (5) 64:4;65:12,13; 67:9;72:19 off (4) 48:11;67:21;102:8; 104:5 officer (3) 57:4;59:14;87:9 Old (1) 92:7 Omnibus (11) 3:7,18;14:14,20; 15:3;17:19;18:6,6; 60:9,15;73:5 Once (4) 12:8;18:25;43:7; 71:20 One (50) 2:17;8:15;9:3; 10:4;14:4;16:4; 19:24;22:2;28:17; 31:19;39:8;43:6; 47:8;48:8,21;51:7; 53:2,23;54:14,22; 55:9;57:16,16;58:13,	14:59;6;61:4;63:17, 21;65:7,9;68:9; 69:25;70:13;72:3; 74:22;75:8,18;77:14; 80:9;86:10,21;87:11; 88:12;98:12;100:10; 101:3,11;103:10; 104:13 ongoing (1) 81:23 only (15) 12:12;20:1,2; 29:19;47:14;56:22; 64:20;69:7;72:3; 73:4;82:12;85:11; 91:16;100:5,8 onto (1) 94:15 open (1) 59:20 operated (2) 10:4;98:12 operates (1) 94:5 operations@escribersnet (1) 4:25 opinion (21) 8:7,18,21,25;9:13, 15;10:24;19:5;36:25; 53:19;63:12;95:19, 21;96:1,5,12;97:6; 99:25;100:6;101:3; 103:7 opinions (2) 56:25;57:1 opportunity (1) 56:17 opposed (1) 36:10 opposition (12) 8:8,24;11:2;93:12; 96:2,7,15,20;97:7,9, 15;98:24 opted (1) 71:9 option (1) 77:11 orally (3) 32:8;36:25;43:6 Order (51) 3:2;7:9,19,20,21, 23;8:2,4,7,18;9:16, 21;10:20,23,23;11:7, 15,16,19;12:5;13:18, 19,24;15:13;17:13; 31:7;51:5;53:19; 63:2;66:10;73:1; 78:10;80:18;82:4; 93:20;95:13,17,19, 22,23,24;96:3,14; 97:4,5,23;99:20; 101:8;103:7;105:8, 12
---	--	---	---	--

ordered (6) 7:24,24;8:3;11:5, 12:99:11 orders (1) 93:24 ordinarily (2) 42:23;53:3 organization (1) 83:8 origina (1) 68:21 original (1) 103:7 originate (2) 64:13,17 originated (4) 63:17;68:4;70:17; 71:3 originating (2) 67:24,25 origination (7) 62:18,22;63:9,11; 64:17;65:8,22 originator (1) 62:20 OSC (1) 104:15 otherwise (2) 31:7;62:24 ought (2) 55:6;58:8 out (32) 9:25;12:24;14:12; 19:3,21,25;20:10,17; 24:21,21;26:1,8; 29:20;31:24;46:16, 25;48:5,22;49:13; 50:3,5;59:10,19; 68:21;69:6;70:20; 77:24;88:4;91:14; 95:2,3;98:7 outlined (2) 62:4,15 outrageous (1) 64:19 outset (1) 61:13 outside (1) 42:6 over (8) 10:10,14;20:21; 36:9;60:10;76:19; 81:25;94:23 overnight (1) 90:7 overruled (1) 100:6 overruling (3) 8:19;51:19;95:19 oversight (1) 35:10 overstate (1) 16:12	overstepped (1) 21:1 owe (1) 42:24 owed (2) 16:12;43:25 owing (3) 61:1;67:4;72:5 own (7) 10:19;25:9;58:24; 66:7;77:24;78:25; 86:16 owned (3) 10:3;65:18;98:12 ownership (1) 65:19 P Pablo (10) 3:4;6:8;7:11,23; 9:18,21;10:17;14:8; 96:25;97:23 package (3) 33:13;40:6;90:7 page (12) 7:8,24;8:2,25; 11:22;14:23;17:18; 26:17;56:22;82:7; 95:25;97:4 pages (1) 96:12 paid (6) 10:8;19:23,24; 20:3;72:8;78:14 paper (2) 13:7;102:20 papers (3) 72:16;74:23;82:16 paperwork (15) 10:1,10;47:11,18; 49:5,6,8,10;55:15,16, 18,21;56:1;67:25; 98:8 paragraph (3) 7:23;82:7;96:3 paralegal (4) 10:2;98:2,3,10 pardon (1) 68:17 part (15) 8:18,19;13:3; 31:11;53:8;64:4; 77:2,2;95:19,19; 99:11;100:6,7,8,9 particular (3) 86:23;88:19;91:17 Party (14) 6:12,13,18,19,20, 22;10:21;13:1;31:23; 39:1,2;42:4;43:18; 102:20 past (2)	43:23;88:25 patiently (1) 76:1 pattern (1) 82:12 Pause (1) 11:17 pay (4) 11:15;31:24;47:12; 101:24 payable (1) 11:13 pay-by- (1) 80:19 paying (2) 20:21;72:6 payment (43) 18:15,23,24;23:9, 10;24:17;67:4;77:8, 11,14;78:5,9,11,19, 20;80:17,19;81:2,2,6, 8,11,20,21;82:12; 83:18,20,21,23;84:5, 7,8,9,9,13,18,21;85:3, 4,14,21;87:14;88:9 payments (43) 18:8,14,17,19; 19:22,25;20:8;21:3,4, 8,8,18,20,23;22:5,15, 17,24;23:17,24,24; 24:1,2,7,32;9;66:4; 70:25;71:13,16,18, 18,23;72:12;77:13, 23;78:4;80:24;81:13, 15;85:11,11,15;87:7 PC (1) 6:2 pending (5) 73:20,21;74:9; 93:7;105:6 people (6) 40:15,21;41:10; 43:24;48:1;86:10 percent (2) 64:20;88:13 perception (1) 85:7 period (2) 13:6;76:19 permanent (1) 67:11 permission (1) 7:17 permits (1) 93:18 permitted (1) 94:5 person (4) 7:25;10:4;95:5; 98:12 personal (1) 78:7 personally (1)	86:13 personnel (1) 41:20 person's (1) 102:21 pertaining (1) 27:16 petition (10) 73:11,12,14;74:9, 12,15,18,20;75:2; 102:19 petitions (1) 94:21 ph (2) 31:10;91:23 PHILPOT (61) 6:12;75:19,22,25; 76:9,10,15;77:9;78:3, 15;79:4,5,5,8,12,14, 16,19,24;80:12;81:7, 8,11,14,17;82:18,21, 23;83:3,6,17;84:1,3, 10,19,22,24;85:1,5,6, 17;87:6,22,25;88:2; 89:3,16,19;90:3,8,11, 12,15,25;91:5,8,10; 92:16,17,20,24 Philpot's (2) 76:24;78:25 phone (14) 12:7;17:22;26:19, 20;33:1;61:16,17,18; 62:2,6;75:22;76:14; 80:20;95:6 piece (2) 103:10;104:13 place (4) 28:12;86:6;92:8; 104:2 placed (2) 67:8;86:18 places (1) 86:11 plaintiff (1) 38:15 Plaintiff's (2) 4:3;93:8 plan (8) 18:17;23:9;24:1,7; 47:20;63:2;67:8,10 plane (2) 94:13,15 planning (1) 61:3 playing (1) 68:23 pleading (1) 102:19 pleadings (4) 10:8;28:16;66:25; 70:16 please (2) 21:17;59:3	pm (5) 8:3;23:20;24:8; 25:16;105:21 podium (2) 14:15;60:10 point (12) 12:24;30:6;37:14; 58:13;59:6,15;65:6, 24;68:21,21;78:10; 83:25 pointed (1) 59:19 points (2) 71:8;72:2 pools (1) 16:14 portion (2) 101:8;103:6 portions (2) 24:21,22 position (21) 18:21;24:2;28:15; 30:8;34:24;35:24; 37:25;40:12,12; 41:22;42:9;62:25; 76:21;77:5,12;78:24; 81:17,20;84:4;90:17; 92:1 possibility (1) 83:13 possible (1) 26:3 Post (1) 55:17 potential (1) 16:23 power (3) 56:15,21;57:11 practically (2) 88:4;92:14 practice (4) 44:22;45:2;94:17, 19 practiced (1) 29:19 practices (1) 41:2 practicing (1) 88:11 preceding (1) 18:16 prefer (1) 12:21 prejudice (1) 51:19 pre-mark (1) 25:8 pre-marked (1) 26:4 prepare (1) 55:5 prepared (4) 12:20;24:3;59:22,
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24	procedures (4) 12:6,20;93:20,21	prosecuted (1) 93:25		34:15;39:6
pre-petition (1) 60:19	proceed (8) 12:24;13:3,22; 46:14,18;58:15; 93:21;104:20	protect (1) 50:21	R	recognizing (1) 36:3
preponderance (2) 28:17;60:20	proceeding (16) 11:24;13:2,16; 18:9;52:18;57:13; 75:16;79:7;80:10; 93:25;94:2;99:16,21; 104:17,21,25	prove (1) 38:16	raise (1) 58:14	reconcile (1) 29:23
prerogative (1) 58:18	proceedings (3) 23:13;80:2;105:21	proven (3) 48:20;60:20;69:5	raised (3) 18:7;56:16;57:20	record (17) 9:6;14:9;21:19; 53:20;59:2;60:1; 80:11,15;81:4;83:9; 87:6;92:6,10;93:23; 96:9,16;104:16
prescribe (1) 13:6	process (12) 10:1,7;71:17;80:6; 82:1;84:13;88:2,23; 89:3;90:16;91:18; 98:7	provide (7) 7:24;36:6;57:7; 83:14;85:8;88:22; 89:8	raising (1) 57:24	recorded (3) 81:12;85:14;87:14
presence (1) 57:23	processed (2) 78:10,20	provided (10) 9:19;24:20;53:1; 56:21,21;57:7,12; 67:14;80:7;89:12	rate (4) 62:19;64:9,20,23	records (20) 17:2;21:15,18; 22:4,11,14,16,23,24; 23:11,23,23;24:6,14, 14:41;22:60;23,25; 83:4;85:21
PRESENT (5) 6:11;7:14,15; 15:19;26:4	processing (3) 77:7;80:20;86:2	providing (1) 38:6	rather (2) 9:1;41:7	record's (1) 104:13
presented (2) 13:4;48:12	produce (1) 41:1	provisions (1) 80:23	RE (5) 3:2,12,14,20;74:24	recover (4) 37:4,4,18;92:2
presenting (1) 102:18	profits (1) 76:19	published (1) 57:1	reach (2) 14:12;54:21	recovery (3) 37:24;38:1,2
preservation (1) 92:7	program (8) 71:2,3,5,9,13;72:4, 6,8	punitive (8) 28:8;36:11,16,22, 25;37:5,12;54:24	reached (2) 15:21;19:5	redacted (2) 22:11;24:22
preserved (1) 86:12	programs (1) 71:14	purchased (13) 62:21;63:10,10,21; 64:25;65:1,2,16,18, 25;66:3;68:9;69:1	reaction (1) 46:24	Redesignating (1) 3:8
Pre-Trial (4) 3:20,23;11:23,23	project (1) 87:11	purported (2) 77:7;78:24	read (8) 7:20;13:8;59:13; 79:10;89:23;91:9; 92:18;96:3	Redstone (2) 81:24;87:9
pretty (1) 58:23	promise (1) 29:23	purpose (1) 37:6	reading (2) 64:7;102:25	reduce (2) 15:8;16:10
prevail (1) 38:14	promised (1) 33:2	purposes (2) 52:18;74:1	reads (2) 8:2;57:3	reduced (2) 16:3,12
previous (1) 85:20	prompted (1) 18:8	Pursuant (9) 3:3;7:10,22;15:7; 18:17;23:9;56:15; 94:1;95:14	ready (1) 50:6	Reducing (3) 3:7,8;15:14
previously (2) 29:15;37:11	pronounce (1) 29:24	purported (2) 77:7;78:24	really (10) 31:22;35:9;37:15; 49:6;54:19;72:20; 78:25;94:14;95:5; 101:23	Reed (1) 36:21
primarily (1) 29:12	Pronounced (1) 29:17	put (6) 21:10;48:10;59:24; 70:24;78:17;86:18	reason (2) 71:11;91:16	R-E-E-D (1) 36:21
printed (1) 98:21	proof (3) 48:7;57:17;62:17	putting (1) 44:21	reasonable (1) 102:22	refer (4) 24:21;53:20;56:25; 57:1
prior (11) 15:24;18:25;72:8; 76:23;80:16,17;81:3; 84:15;85:11;86:14, 19	proofs (3) 10:7;14:10;60:18		reasons (4) 18:5;28:15;88:11; 94:14	reference (1) 95:18
PRIORE (5) 6:16;27:22;28:1; 59:8;76:14	prop (1) 69:10	Q	receipt (4) 19:12;22:25;23:7; 24:6	referenced (1) 66:25
Priore's (2) 70:16;76:14	properly (4) 78:10;86:5,9,25	ques (1) 49:17	received (11) 10:12;12:13;21:20; 33:15;61:3,10;81:23; 83:23;89:6,25;91:1	referred (2) 10:24;67:3
privilege (2) 20:2;22:12	property (24) 30:12,17,21;38:7; 47:16;48:4,6;49:22; 51:9,10;69:1,2,7,12, 15,18,19,20;70:1,13; 86:24;87:10;92:5; 93:16	quiet (8) 28:15,22;29:9; 30:5,19;51:6,9;70:7	recitals (1) 16:10	referring (1) 96:12
privileged (1) 24:25	proposition (1) 45:22	quite (4) 57:13;83:9;88:11; 94:23	reckless (5) 39:6,11,17;40:10; 52:17	refers (1) 19:14
Pro (7) 6:12,13,18,19,20, 22;103:11	prosecute (2) 93:19;94:3	quote (2) 74:25;102:17	recognition (1) 83:24	refinished (2) 86:14,15
probably (1) 29:14		quoted (2) 9:16;96:4	recognize (5) 58:10,12;59:25; 76:2;92:4	reflect (3) 78:14;83:22;84:8
problem (6) 41:15,18;80:15; 91:15;101:3;103:12			recognized (2) 81:22;83:10	reflected (4) 18:15;21:5,6;60:1
Procedure (13) 3:3;7:11,22;10:3,9, 18;11:4;12:25;13:9; 93:18;94:1,95:15; 98:11			recognizes (2)	refuted (1) 63:3
				regard (2)

74:19;81:18 regardless (1) 38:2 regards (9) 30:24;31:15;42:10; 59:4;67:21;76:13; 77:4;79:2;91:24 Reinhart (1) 55:16 relate (1) 64:17 relates (3) 24:2;62:18;66:21 relationship (3) 31:22;42:5;44:11 reliance (1) 39:1 relief (4) 9:4;70:21;71:2,24 relies (1) 56:22 relieved (1) 71:5 rely (7) 24:15,16;25:3; 26:6,7;39:5;41:14 relying (1) 41:5 remain (1) 72:1 remained (1) 71:23 remaining (2) 73:4;75:9 remains (1) 104:24 remedy (3) 37:21;38:5;46:24 remedy's (1) 46:25 remember (2) 43:20;44:7 remove (1) 22:11 rendered (1) 10:12 renewed (1) 72:5 repair (1) 86:4 repay (1) 64:19 repaying (1) 64:21 repayment (5) 18:17;20:9;23:9; 24:1,7 repeated (1) 59:15 reply (7) 27:19;28:1;56:12, 16;59:9,19;76:11 report (9)	82:10;83:22;84:7, 15,21;85:4,10;87:13, 15 reports (2) 89:19;91:6 represent (2) 49:1;60:19 representation (4) 18:22;35:12;38:17; 77:21 representative (2) 34:24;43:15 representatives (1) 32:14 represented (2) 14:2;53:5 request (2) 15:13;33:9 requested (3) 10:11;47:16;83:18 require (3) 28:21;29:6;100:2 required (4) 10:9;97:3;99:24,25 requirement (2) 39:7,19 res (2) 74:1,11 ResCap (24) 3:6,9,17,21;4:2; 6:14,16;7:6,7;8:19; 12:13;14:14,18; 17:16,19;26:17; 27:23;36:15;42:14; 60:13;76:6,7;93:7; 95:20 research (12) 9:11,25;10:3,5,8, 14;96:17,18,24;98:6, 11;100:14 Residential (12) 7:3;11:25;16:4,16, 17;34:17;57:5;59:12, 14,16;63:20;65:11 resolution (2) 19:10;54:22 resolve (2) 53:25;78:19 resolved (5) 15:9;28:21;29:14; 71:20;77:14 resolving (2) 35:24;78:2 resources (3) 41:8,19;47:12 respect (15) 8:14;10:22;14:11; 15:11;37:2,12;39:5; 42:13,15;51:12; 52:14,24;57:18; 61:21;99:17 respond (8) 19:18;27:13;56:17;	76:3;100:1;105:12, 14,15 respondents (1) 61:1 response (21) 8:4,6,11;9:16,17; 10:25;12:4;16:2; 17:10;27:18;61:8,10; 62:16,18;76:10;79:6, 7,8;80:8;91:6;97:4 responses (6) 15:10;60:24;61:2, 3,5;62:23 responsibility (1) 67:24 responsible (7) 19:4;38:2,3;86:23, 23;92:13;98:23 restore (1) 36:6 restoring (1) 38:6 result (4) 11:20;69:6;71:22; 78:25 resulted (1) 41:24 resulting (2) 39:1;81:18 retained (4) 9:25;98:6,17,17 retainer (1) 98:19 retracting (1) 99:18 reversal (3) 9:9;96:11;103:4 review (5) 89:25,25;91:3,4; 95:25 reviewed (1) 18:14 reviewing (1) 88:23 revived (1) 20:24 rewriting (1) 31:6 RFC (2) 17:3,7 Richmond (6) 38:20;48:12,19; 50:5,9;54:11 RIGEL (40) 6:22;61:15,16; 62:5,7,8,14;66:16,18, 19;67:7,10,14,16,17, 20;68:2,11,13,17,20; 69:11,12,14,15,17,19, 22,24;70:2,4,5,8,10, 18,19;72:11,17;73:1, 3 right (80)	11:18;13:13;15:2; 16:8;19:12;20:12; 23:14,15;24:24; 25:13;26:11,22;27:7, 11;29:4;30:14;32:2, 5,8,11,24;33:5,6,8,11, 16;34:9,21;35:25; 36:14;38:9;41:10,25; 42:3,21,23;43:1; 44:3;45:5,18;47:2; 50:22;51:1,4;60:4,7; 61:20,21;62:8,13; 65:14,23;66:8,10,13, 14;67:16;72:13,24; 75:15,17,22;77:22; 79:20,22;80:11;89:2, 20;90:11,25;92:16; 93:5;94:8;97:18; 99:2;103:22;104:1,7, 10;105:16 rights (6) 31:25;65:1,1,17, 18;92:11 rise (2) 53:7;68:15 risked (1) 50:20 robosigned (2) 55:15,18 robosigning (1) 56:12 roof (1) 86:18 Rosenbaum (46) 7:4,5,6;11:21;12:2, 10,17,23;13:12,17, 21;14:3,7,11;60:10, 12,12;61:23;62:3,15; 63:7;66:17,20,23; 68:6,7;69:23;70:12, 14;72:13,15,22;73:4, 8,14,17,19,21,24; 74:4,6,10,16,22;75:6, 8 Roth (1) 91:13 round (1) 46:4 Rubius (3) 31:10;39:5;42:8 Rule (21) 3:3;7:10,22;8:10, 14;10:18;11:4;12:24; 50:6,7;74:1,18;90:2; 91:4;94:6;95:14; 97:8;102:17;104:22, 22,23 ruled (8) 36:25;37:1,11; 63:1;73:12;94:9; 95:8;99:3 Rules (3) 11:6;93:18;94:1	ruling (9) 30:5;37:17;52:11; 53:1;66:11;90:19,23; 95:9;99:19 rundown (1) 48:9 S Sacramento (2) 74:23,23 sale (2) 28:12;36:8 same (7) 13:19;38:5;47:1; 59:15;71:23;72:1; 80:16 sanction (7) 11:6,11,20;13:13; 99:22;100:13,15 sanctioned (2) 101:9;103:16 Sanctions (19) 3:3;7:10,21;8:5; 9:19;11:7,13;13:1,4, 19;95:14;97:1;99:7, 18;101:13;102:3; 104:14,22;105:4 sanded (2) 86:13,14 sat (1) 19:1 satisfies (1) 39:7 satisfy (2) 36:20;39:18 Satter (1) 56:16 SATTERWHITE (81) 6:18;26:19,19,20, 21,23;27:1,13,17,18; 28:3,13;31:23;32:10; 33:3;34:21;35:19; 36:4,6,15;37:9,18; 38:5,15;42:9;43:8; 44:21;46:5,14;47:4,5, 6;49:15,18,19,20,23, 25;50:2,15,17,19; 51:7,14,17,21;52:5; 53:11,13,22;54:3,7, 10,13,20,22,25;55:4, 9,12,13,14,24;56:4,7, 8,10,17;57:18,24; 58:1,2,4,7,15,16,25; 59:2,7;60:5,6 Satterwhite's (4) 40:1;41:25;52:19; 57:13 Saturday (2) 49:5,6 saw (3) 14:5;23:6;88:3 saying (8)
---	--	--	--	--

20:15;37:2;43:2; 49:8,15;56:4;59:16; 67:21 SBA (1) 87:18 scanned (1) 90:5 schedule (3) 23:15,18;87:23 scheduled (4) 11:23;32:19,23; 90:22 schedules (1) 76:25 scheduling (1) 24:8 scope (1) 42:6 Se (7) 6:12,13,18,19,20, 22;103:11 SE2d (1) 38:22 seat (1) 76:2 seated (1) 7:2 second (6) 26:25;32:22;56:9; 73:10;77:4;82:7 secretary (1) 49:9 section (1) 21:6 securitization (1) 62:22 security (1) 16:13 seeing (1) 19:5 seek (2) 13:1;47:19 seeking (1) 54:23 seeks (3) 15:8;16:10;60:18 seem (2) 46:16;52:1 seems (6) 23:19;29:11;33:22; 34:18;64:17;78:18 sees (1) 19:8 sell (4) 48:4;69:25;70:12, 13 send (4) 33:24;34:25;90:9; 93:1 sending (1) 47:11 Senior (1) 6:14	sent (16) 19:23,24;20:14,14, 23;21:1,6;35:1;49:4, 4;50:2;55:18,19; 78:4,5,6 separate (3) 13:18;31:2;65:19 September (14) 77:8;78:9;79:2; 80:20;81:9,16,22; 83:19;84:5,14;85:14; 87:16,18;92:1 series (1) 77:6 serious (1) 41:24 seriously (1) 86:1 serve (1) 50:21 served (1) 94:24 service (2) 13:5;45:4 serviced (1) 63:24 servicer (17) 31:1,25;34:9; 42:24;43:4,25,25; 44:9,14;45:22,23; 52:6;53:3,5,8;59:18; 72:19 servicer's (2) 52:2;80:19 Services (10) 9:25;10:3,5,8,10, 11,14;16:19;98:6,12 servicing (20) 24:19,22;41:2,3,6; 63:25;64:3,25;65:1,2, 17,17,19,22;66:6; 67:9;83:7;85:22; 87:1;91:18 set (1) 13:9 sets (1) 12:25 settle (3) 95:7,7;100:20 settled (1) 58:9 settlement (1) 53:24 seven (1) 72:6 seventy-five (2) 19:2;20:4 seventy-sixth (2) 17:19;18:6 several (2) 7:16;87:8 Seybourn (2) 86:7;92:9	shall (4) 7:25;8:4,6;97:4 shambles (1) 100:18 shell (1) 68:23 sheriff (3) 20:15,23;21:1 Shifer (1) 3:9 Show (44) 3:2;7:9,19,21;8:2; 9:15,17,21;10:22,23, 23;11:19;12:5;18:23; 19:22;20:7,8,9;21:18, 21;22:3,13,16,23; 24:6;42:6;60:25; 84:15;85:10;87:6,14, 17;95:13,17,23,24; 96:3,14;97:4,23; 99:20;101:8;103:7; 105:13 showed (5) 19:24;21:15;22:25; 23:7;88:24 showing (2) 22:4,14 shown (4) 18:16,24;20:10; 21:9 shows (4) 21:5;23:24;40:9; 82:12 sic (9) 10:4;31:11;47:10; 55:15;71:14;74:24; 91:12,21;92:8 sides (2) 26:3;45:8 sign (2) 57:22;98:19 signatory (1) 56:14 signature (2) 56:22;57:3 signatures (1) 59:5 signed (3) 57:21;62:20; 104:25 significant (2) 81:4;87:11 signing (6) 57:3,8;59:5,11,14; 102:18 simple (2) 53:14;94:21 simply (5) 31:1;39:23;40:13; 53:19;68:25 single (3) 84:18;85:3;87:12 sit (1)	75:12 sitting (2) 50:8;76:1 situation (3) 81:18;85:20;88:19 situations (2) 87:2;91:17 six (2) 20:25;71:20 sixty (14) 78:14;80:16,16,18, 25;81:3,4;82:14; 83:23;84:15,15; 87:13,14,15 sixty- (1) 80:13 Skillstorm (1) 31:11 Small (2) 81:24;87:8 Social (1) 74:24 soil (1) 50:22 sold (3) 65:2,10,11 solely (1) 15:11 somebody (2) 41:7;50:2 somebody's (1) 41:6 somehow (1) 44:11 someone (4) 32:22;41:1;49:12; 83:1 sometimes (3) 35:11,12,13 sooner (1) 34:3 Sorry (13) 14:25;27:2;40:19; 69:17;70:8,10,19; 72:2;73:16;74:16; 75:21;92:20;105:18 sort (3) 34:18;53:20;95:7 sought (2) 91:10;93:15 speak (10) 23:4;25:5,14,25; 26:8;43:6;47:7;70:7; 83:1;104:20 special (1) 44:11 specialist (2) 102:14,17 specialized (1) 10:6 specific (6) 10:20;34:23;60:21; 80:21;82:8;91:5	specifically (5) 8:22;43:8;46:1; 74:11;99:24 speculative (1) 88:22 speech (1) 80:1 spent (1) 10:9 split (1) 34:14 spoke (7) 32:13,22;43:14; 82:16;83:1,17; 100:19 spoken (1) 12:18 spring (2) 18:19;23:12 stage (3) 46:4;51:20;52:18 stamped (1) 55:19 standard (1) 38:19 standpoint (1) 40:2 Star (2) 39:9;42:8 start (4) 63:12;67:20;82:2,2 started (4) 69:4;71:12,15; 91:25 starting (1) 85:21 state (10) 35:5,7;49:2;70:15; 73:23;74:2,2,20; 76:22;92:11 stated (3) 8:25;18:5;28:16 statement (1) 94:10 States (3) 2:16;42:20;75:2 states' (1) 43:24 Status (3) 3:11;17:20;73:11 stay (3) 27:5;94:25;95:1 stayed (1) 105:5 step (1) 43:7 Stephan (12) 55:23;56:14,23; 57:1,1,2,8,9,18,22; 59:4,13 Stephans (1) 55:15 Stephan's (3)
---	--	--	--	--

57:3,20;59:11 steps (1) 48:3 STEVEN (2) 6:22;61:7 stick (1) 9:12 sticks (2) 9:13;101:1 still (11) 20:19;48:13;49:21; 50:8;72:5,6,7;73:20; 84:9;87:14;92:19 stipulation (1) 16:22 stop (12) 21:13,13,17,22; 23:3;31:16;36:12,14; 47:19;70:4;81:15; 89:2 storm (2) 85:12;87:1 storms (3) 85:25,25;87:3 story (1) 45:8 straight (1) 23:19 Street (3) 4:22;38:21;92:7 strictly (1) 81:20 structure (1) 92:6 stuff (1) 100:25 subject (3) 11:6;15:10,14 submission (6) 66:9;72:25;75:5; 79:11;90:2;104:12 submissions (2) 77:9;79:9 submit (6) 17:12;26:9;33:18, 25;35:2;40:6 submitted (5) 27:22,24;76:14; 82:11;89:5 submitting (1) 102:19 Subsection (1) 103:1 subsequent (3) 72:18,19;81:20 subsequently (2) 18:11;62:21 substance (3) 13:2;37:15;62:17 substantiate (2) 18:24;41:22 successful (1) 88:25	sudden (1) 44:11 suffered (1) 20:24 sufficient (2) 57:7,19 suggest (1) 29:7 suggested (1) 19:7 suggestion (1) 10:7 Suite (1) 4:22 sum (2) 37:15;62:16 supplemental (3) 12:6;27:24;93:21 support (24) 9:3,18,20;17:11; 27:21,25;31:9;33:12; 52:5,8,23,25;53:8; 59:9;67:15,19;76:11, 14;93:11;96:25; 97:22;101:2,6;104:3 supported (5) 56:1,20;70:16; 72:16;100:13 supposed (2) 49:13;94:13 Supreme (2) 38:22;75:2 sure (20) 7:12;14:16;15:3; 25:15;28:24;29:10; 41:12;42:4;43:22; 44:1;60:1;86:4,9,17, 25;88:11;90:5;91:2; 92:5,13 surface (1) 85:8 surprised (2) 85:15,17 sur-reply (1) 89:12 surrounding (1) 62:16 survived (2) 100:8;103:11 sustained (3) 17:11;61:22;100:6 sustaining (3) 8:18;51:5;95:19 system (9) 77:7;80:1,20;81:3; 82:3,4;83:11,13;90:6 Systems (2) 31:11;83:10	88:18;105:2 talked (3) 34:23;94:23;102:5 Tami (1) 88:12 telephone (7) 7:17;15:20;17:23; 28:1;54:9;58:20;80:1 Telephonic (1) 3:11 TELEPHONICALLY (7) 6:13,15,17,18,19, 21,22 telling (1) 35:2 ten (11) 33:18,21,25,25; 34:3;35:2;40:6; 43:17;44:20;46:20; 52:21 term (5) 32:16;82:7;84:10, 11,12 terminology's (1) 51:8 terms (6) 31:2,25;77:7;78:2; 88:15;94:22 testify (5) 24:3,6;40:18,23; 41:13 testifying (1) 54:8 thankful (1) 50:20 that'll (1) 61:11 theories (4) 28:22;37:24;38:9; 46:10 theory (2) 45:15;46:18 therefore (4) 16:12;17:5;66:2; 76:25 therein (2) 78:25;103:2 There're (1) 55:25 thereto (1) 10:22 thirty (4) 82:13;85:22;87:2, 11 Thom (1) 21:11 THOMAS (1) 6:19 Thomp (1) 20:6 Thompson (46) 3:12;6:20,20; 17:21,22,23,24;18:7,	10,12,13,18;19:1,1, 13,18,19;20:7,12,13; 21:12,13,16,21;22:7, 18;23:2,3,20,21;24:9, 11,20;25:2,6,14,21, 24;26:10,12,13;27:2, 3,7,8,9 Thompsons (1) 23:17 Thompsons' (2) 25:9,18 thoroughly (2) 60:22;102:7 though (5) 20:19;21:4;77:11; 80:25;98:16 thought (7) 20:2;56:6;70:10; 100:19,20;101:25; 105:9 three (11) 28:6,13,17,22;34:6, 12;37:23;46:25;52:7, 21;61:4 three-and-a-half-year (1) 76:19 throw (2) 9:11;100:25 thrown (1) 91:14 timely (6) 14:10;18:15,24; 32:9;73:19;86:3 times (3) 20:25;66:7;90:21 timing (1) 26:8 title (9) 28:15,22;29:9; 30:5,12,13,19;51:6,9 today (32) 8:16;11:5,12,12, 20;13:10;15:11; 17:22;19:11;24:4; 25:22;26:19;28:1; 46:17,22;49:6,7; 55:5;61:4;73:5; 76:14;80:3;84:17; 94:12,14,15;96:4; 99:10,12;102:8; 104:18,24 today's (3) 17:18;26:17;60:9 told (28) 10:5;21:14;22:1; 34:25;35:20,21; 46:20;47:17,20,22; 48:4,13,20;50:3,5; 52:20;71:4,10,12,16; 83:20,24;84:6,20; 85:3;87:17;89:6; 102:5 tomato/tomato (1)	30:3 took (2) 28:12;48:22 top (1) 104:5 torn (1) 86:11 tornados (1) 85:25 total (5) 11:9,13;86:21; 99:19;103:19 totally (2) 80:25;103:14 transaction (2) 64:4;83:14 Transcribed (1) 4:20 transcript (1) 96:4 transferred (7) 63:21;64:1,3,16; 67:9;68:10,14 transpired (1) 81:21 trashed (1) 86:11 treat (1) 47:25 treated (2) 49:10;91:18 tremendous (2) 91:19;92:10 tremendously (1) 88:25 trial (5) 67:7,10;71:21; 72:17,18 trials (1) 54:8 tried (8) 20:7,7,9,22;43:24; 79:19;88:14,17 TRO (1) 93:15 troubled (1) 45:11 true (4) 44:25;53:4;82:10; 98:14 Trust (57) 3:9,21;6:17;7:7,7, 25;12:13,24;14:19; 15:4,8;16:10,20;17:1, 5,17;21:18,19;23:17; 24:5;25:2;27:15,19, 21,23;36:17;39:24; 41:9,9,18;48:1; 50:19;51:10;53:12; 54:17;56:11,21;57:7, 17;60:13,18,22;61:3, 10;63:16,21;65:9; 75:13;76:6,8,11;
	T			
	talk (5) 40:3;42:3;54:18;			

90:18;93:6,7,10; 95:20;99:24 Trustee (1) 16:19 trusts (1) 16:14 Trust's (19) 3:6,17;4:2;8:19,21; 14:14;17:19;22:4,10; 26:18;28:15;37:25; 42:8;56:19;57:19; 60:14;76:21;78:23; 100:7 truth (9) 39:6,15,18;40:10; 50:24;52:17;85:9,9; 90:16 try (9) 14:12;19:7,9; 47:19;49:12;53:24; 54:16;77:10;88:17 trying (4) 21:7;36:2;82:1; 86:8 Tubb (1) 91:12 turn (1) 60:10 turns (1) 69:6 TV (2) 47:21;71:1 twenty-one (1) 13:5 twice (1) 93:15 two (10) 16:6;26:2;31:13; 37:20;38:9;45:8; 52:14;76:18;89:19; 92:19 types (2) 37:20;52:14 typical (1) 88:25	39:18 uncontested (3) 15:17,18;61:22 under (27) 10:9;13:3;18:5; 20:3;32:9;37:23; 43:2;47:25;50:23; 51:23;53:4;66:8; 70:22,23;71:4,6,13, 25;72:4,6,24;75:5; 90:1,18;102:23; 104:12,22 underneath (1) 59:12 unders (2) 40:8,11 Understood (3) 37:10;49:3;83:12 undertakes (1) 45:23 undisputed (2) 46:19;78:18 undoubtedly (1) 14:5 unfortunate (1) 40:16 uniform (1) 34:18 Union (3) 78:5;81:24;87:10 unique (1) 25:12 unit (1) 83:24 United (2) 2:16;75:2 unless (2) 13:5;95:2 unrepresented (1) 102:20 unsecured (4) 17:3,4;28:3;76:16 unsubstantiated (3) 9:6;96:8,16 unsupported (4) 9:7;96:9,16;100:11 untimely (3) 9:5;79:8;96:8 up (23) 20:21,24;28:6; 36:23;43:20;44:7; 48:15,15,17,18,21, 21;75:25;76:18; 77:10;78:4;79:17,19; 84:2;86:11;90:21; 94:9;100:25 update (1) 18:3 upon (1) 41:14 upset (1) 20:10 use (3)	32:16;80:1;82:7 used (5) 48:8;84:10,11; 86:3;87:3 utilize (2) 41:20,21 V valid (5) 30:6;56:5;60:19; 76:22,22 validate (1) 60:23 value (1) 16:12 various (1) 66:7 Vegas (2) 9:25;98:7 vehicle (1) 31:6 version (1) 41:23 viable (1) 9:4 violate (2) 8:14;10:21 violated (3) 10:18,22;11:4 violates (1) 11:5 violation (2) 8:9;97:8 Virginia (18) 29:16;30:4;31:12; 34:14,15;38:18,23; 39:19;42:14;43:2,23; 49:1;51:23,24;52:10, 10;53:4;54:11 vision (1) 47:8 visited (1) 18:13 voice (1) 83:23 voicemail (1) 12:13 void (1) 72:9 voluntarily (1) 12:19 W wait (1) 50:12 waiting (1) 50:9 waive (1) 78:21 wall (2) 9:12;101:1	warehousing (1) 16:14 warranted (1) 103:2 Washington (1) 55:17 water (4) 70:22,23;71:6,25 way (4) 70:6;88:6;98:16; 105:15 ways (1) 78:3 welcome (1) 27:5 Welfare (1) 74:24 Wells (13) 15:12,14,20,22,24; 16:11,15,20,21,22, 24;17:2,10 weren't (2) 21:4;99:16 West (1) 4:22 Western (1) 78:5 Westland (1) 31:10 what's (7) 13:16;19:11;31:17; 45:19;53:20;72:16; 73:11 whatsoever (2) 101:2,20 wheelchair (1) 24:11 When's (1) 81:6 whereas (2) 46:19;96:5 whereby (1) 16:22 Whereupon (1) 105:21 whim (1) 100:3 who'd (1) 69:12 whole (5) 36:6;38:5;87:19, 19;98:19 whose (1) 57:7 wife (2) 86:8,22 Willingboro (1) 18:13 wiped (1) 88:4 wish (2) 13:3;26:7 wishes (2)	12:24;13:1 Wishnew (182) 12:10,12,13;17:15, 16;18:1,2;19:14,16; 22:1,8,9,13,20,23,25; 23:3,5,6,24;24:14,16, 19,25;25:2,5,7,11,15, 17,19;26:1,4,8,14,15, 16;27:12,14;28:24; 29:4,7,10,13,15,18, 22;30:2,11,13,15,18, 22,24;31:20;32:4,7, 12,15,20,25;33:6,9, 12,17,20,23;34:2,5,8, 20;35:4,7,14,16,18, 25;36:2,13;37:7,8,10, 13,22,25;38:11,20, 25;39:8,10,12,14,16, 20,22;40:11,16,19, 22,25;41:8,13,17; 42:1,4,18,22,25;43:3, 11,22;44:1,3,6,10,14, 19,24;45:1,5,10,14, 18,20;46:1,8,12;47:2; 51:1,3;52:1,3;53:18, 23;54:14,18;55:6,8; 56:1;58:8,10,12;59:1, 3,8,18,21,23,25;60:3, 8;75:15,18,23;76:3,5, 5;77:15,18,20,23; 78:2,13,22;89:8,10, 12,21,21,22;90:4,7, 10;91:2;92:25;93:3, 10;94:7;95:6;105:2, 17,19 withdraw (1) 105:1 withdrawing (1) 104:13 withdrawn (1) 13:8 within (19) 11:15;13:5;33:18, 25;43:17;44:20; 52:21;57:19;78:14; 80:16,21,24,25;82:8; 83:21,23;84:7,15; 87:14 without (9) 51:19;53:25;58:17; 68:18;74:19;84:18; 99:9;100:9;101:6 witness (1) 24:5 witnesses (1) 54:8 wonderful (1) 92:10 word (2) 19:3;82:8 words (1) 70:24 work (6)
U				
ultimate (1) 52:11 Ultimately (3) 18:12,24;19:3 Um-hum (16) 25:7,11;32:12,15; 35:4;42:18;43:11; 45:14;46:8,12;98:9; 99:13;101:5,10; 103:5,8 unambiguous (1) 31:6 unclear (1) 52:10 uncommon (1)	up (23) 20:21,24;28:6; 36:23;43:20;44:7; 48:15,15,17,18,21, 21;75:25;76:18; 77:10;78:4;79:17,19; 84:2;86:11;90:21; 94:9;100:25 update (1) 18:3 upon (1) 41:14 upset (1) 20:10 use (3)			

10:15;26:1,8; 97:24;98:3,20 worked (6) 47:13;86:15,16; 88:4,12;98:17 working (2) 82:3;90:16 workout (1) 33:12 worry (3) 47:18;71:14,17 worth (3) 47:15;69:2,7 Wright (4) 81:24;85:20;87:9, 15 writ (3) 73:13,14;75:2 write (1) 100:3 writing (1) 36:16 writings (1) 80:7 written (5) 36:24;51:4;66:10; 102:19;105:8 wrongdoing (1) 60:21 wrongdoings (1) 69:6 wrongful (1) 90:17	10,000 (1) 55:18 10:04 (1) 2:21 100,000 (2) 28:7;36:10 10007 (1) 6:6 10040 (1) 4:23 10th (2) 40:3;43:14 11,000 (6) 10:10;11:10;99:9; 101:23;102:4;105:5 112,000 (1) 69:7 1142 (2) 61:6;66:22 12:32 (1) 105:21 12-12020 (1) 7:3 12th (7) 32:23;33:7,16,21, 24;34:4,24 13 (2) 8:3,11 13,500 (2) 11:13;99:14 14-01778 (1) 93:9 14-01778-mg (1) 4:2 15 (1) 93:9 15-01044 (2) 11:24;13:17 15-01044-mg (1) 3:23 15-1 (1) 13:17 15th (9) 25:16;26:9;32:20, 21,23;35:1;40:3,5; 41:25 16 (2) 8:25;96:13 165,000 (3) 68:5;69:2,8 16th (3) 61:12,25;64:4 17 (1) 63:17 17th (1) 18:12 187 (1) 74:24 192nd (1) 4:22 1986 (1) 74:25 1998 (1)	38:23 1st (2) 80:18;83:7 2 2 (6) 17:18;23:20;24:8; 27:23;93:11;103:1 2,500 (6) 11:11;13:14;99:12, 17,19,20 20 (1) 96:13 2006 (4) 63:18,22,25;64:10 2007 (14) 18:9,16,20,25; 19:22;20:13;23:12, 25;68:5,15,25;85:9, 21;86:25 2008 (23) 18:17;23:8;77:8, 14;79:2;80:18,21; 81:9,12,16,22;82:11, 17;83:2,7,18,19; 84:17;85:2,14;86:14; 88:24;92:1 2009 (8) 31:12;63:25;77:3; 82:5;87:21;88:7,7; 91:11 2010 (4) 28:12;32:23,23; 41:25 2012 (5) 28:4;67:3,4;69:3; 85:12 2013 (9) 64:4;67:7,11;85:1, 2,16;86:13,14,20 2014 (5) 7:20;8:17;31:10; 95:18,22 2015 (9) 2:20;8:1,3,11;9:23; 15:5;19:14;24:9; 60:17 20th (5) 23:20;24:8;25:4; 63:22;68:15 225 (1) 6:4 2397 (4) 3:15;26:18;27:16; 28:4 245 (1) 14:10 24th (1) 19:13 25th (2) 9:23;67:11 26th (6)	7:20;8:17;15:5; 27:19;95:18,22 280,000 (1) 76:18 28th (1) 82:11 29th (1) 60:17 2nd (1) 61:2 3 3 (4) 26:17;82:7,7;95:25 30th (12) 77:8;80:20;81:9, 16,22;83:19;84:6,14; 85:14;87:16,18;92:1 30-year (1) 72:7 31 (2) 2:20;8:1 344 (1) 38:22 345 (2) 8:20;95:20 346 (1) 38:22 350,000 (3) 28:8;36:11;76:19 3732 (1) 61:11 3743 (3) 8:20;14:10;95:21 39th (1) 6:5 3d (1) 74:25 3rd (3) 27:18;67:5;87:21 4 4 (5) 7:24;8:2;39:9; 60:8;97:4 40,000 (1) 36:9 41b (3) 93:18;94:1,6 4497 (1) 61:8 455,000 (1) 28:5 455,000-dollar (1) 28:6 5 5 (4) 8:3;25:15;39:9; 42:8	5,000 (2) 28:8;99:19 5.25 (1) 72:4 50,000 (2) 70:22;71:6 50,541 (2) 16:4;17:3 5067 (3) 3:21;76:8,12 507 (1) 38:21 5th (1) 28:4 6 6 (1) 7:9 6.25 (1) 72:4 6:30 (1) 94:14 60s (1) 92:12 610 (1) 31:12 620 (1) 31:12 630,000 (1) 76:16 666 (1) 31:12 6968035 (1) 31:10 7 7 (4) 11:23;14:23;76:24; 87:20 70,000 (1) 47:15 700 (1) 4:22 7359 (3) 15:12;16:16;17:8 7360 (3) 15:12;16:16;17:6 7366 (3) 15:13;16:17;17:7 7373 (3) 15:13;16:18;17:9 753 (1) 74:25 7736 (1) 3:11 7760 (2) 3:20;76:9 7817 (1) 3:11 7824 (1) 3:11
X				
Xed (1) 59:10				
Y				
year (2) 21:3;23:10 years (4) 29:20;47:13,22; 72:6 yesterday (3) 49:5;56:24;79:20 York (14) 2:18,18;4:23;6:6; 33:2;48:5;49:2;54:6; 56:15;57:6;58:19,23; 59:17;98:2				
1				
1 (4) 27:25;63:25;67:4; 76:7 1,000 (4) 11:8;47:15;99:7,22 1,400 (1) 71:23				

7967 (1) 3:11 7990 (2) 3:14;27:17 7th (2) 67:6,6				
8				
8 (1) 17:18 8042 (2) 3:17;60:16 8101 (1) 61:8 8188 (1) 61:9 8190 (1) 61:6 8191 (1) 61:6 8207 (1) 7:12 8208 (2) 3:6;15:5 8280 (1) 27:19 8302 (1) 76:10 8343 (1) 3:11 8349 (1) 3:11 8360 (1) 79:6 8363 (1) 27:20				
9				
9 (1) 26:17 9:21 (1) 94:15 9011 (9) 3:3;7:11,22;8:10, 14:10;18;95:15;97:8; 104:22 9011b (4) 10:18,19;11:4; 102:17 9011c1A (2) 12:25;13:3 9060 (1) 61:4 973406-2250 (1) 4:24 9th (6) 63:25;68:4;82:16; 83:2,18;84:6				